[redacted]3356)
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Attorneys for Plaintiff
Ted Entertainment, Inc.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TED ENTERTAINMENT, INC., a California Corporation,

Plaintiff,

v.

[redacted] p/k/a DOES 1-10

Defendants.

Case No.:

COMPLAINT

JURY TRIAL DEMANDED

Frogan: Reacting by Exiting

"Time to watch the new Nuke ethically. Hell yeah!"

"Thank you guys so much. I do appreciate everyone's support. And thank you for watching it with me"

– Frogan Prior to Reacting to *Content Nuke: Hasan Piker*

"I came from the H3Snark reddit."

"I found my way from Reddit."

– Frogan Reading Comments in Chat Prior to Reacting to *Content Nuke: Hasan Piker*

"Can I use the bathroom please? I'll leave it playing!"

– Frogan Reacting to *Content Nuke: Hasan Piker*

INTRODUCTION

1. This lawsuit is about ending the practice of lazy reaction videos that copy entire copyrighted works and purposefully siphon views and revenue away from the original. Over seven years ago, the owners of Plaintiff Ted Entertainment, Inc. ("TEI") – Ethan and Hila Klein – established the legal standard for fair use reaction videos in *Hosseinzadeh v. Klein*, 276 F.Supp.3d 34 (S.D.N.Y. 2017). As a genre, reaction videos "vary widely in terms of purpose, structure, and the extent to which they rely on potentially copyrighted material." Reaction videos, "like the Klein video" that "intersperse ***short*** segments of another's work with criticism and commentary," constitute fair use.[1] In contrast, reaction videos that are "more akin to a ***group viewing session***" do not. *Id.*, at 40 fn.1, 45-47 (emphasis added).

2. This case involves a "group viewing session" hosted by Defendant Morgan Kamal Majed p/k/a Frogan ("Frogan"). Frogan specifically intended her "group viewing session" to siphon the maximum number of views and revenue away from TEI's copyrighted work *Content Nuke: Hasan Piker* ("*The Nuke*") to herself. Frogan successfully achieved her objective by releasing her "group viewing session" of *The Nuke* immediately after its official release and showing it in its entirety. Frogan greatly profited from her "group viewing session" of *The Nuke* through advertising revenue, donations and paid subscriptions.

3. The moderators of the H3Snark subreddit (the "H3Snark Mods") knew that Frogan's "group viewing session" would serve as a substitute for watching *The Nuke* on TEI's YouTube channel. As such, the H3Snark Mods successfully promoted Frogan's "group viewing session" on the H3Snark subreddit ("H3Snark") as a substitute for watching *The Nuke* on TEI's YouTube channel.

4. Like most lazy reaction videos, Frogan's "group viewing session" of *The Nuke* suffers from a poverty of critical commentary.

[1] The Kleins' video from *Hosseinzadeh* was entitled *The Big, The BOLD, The Beautiful* and is available here: https://youtu.be/CXUs5FOo-JE?si=74MWM26Wn26KmO4o

a. Most frequently, Frogan plays long, unadulterated portions of *The Nuke* to her viewers. In the majority of instances, she does not even pay attention to *The Nuke* and, instead, is on her phone. Frogan even performs an "empty chair reaction" where she goes off-camera for several minutes while *The Nuke* keep playing to keep her audience entertained.

b. On the few occasions Frogan does speak during her "group viewing session" of *The Nuke*, it is to provide repetitive statements on her favorite subject – not the plight of Palestinians, but herself.

c. Other times, Frogan provides short, surface-level observations that provide little to no "new information, new aesthetics, new insights or understandings" on *The Nuke*. *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith ("Warhol")*, 598 U.S. 508, 541 (2023). The vast majority of these observations have little to no "critical bearing on the style or substance" of *The Nuke*. *Id.* at 510. Rather, Frogan's "commentary" primarily consists of repetitive *ad hominem* attacks on Ethan without any reference to *The Nuke* itself.

5. Frogan's unauthorized, highly commercial exploitation of *The Nuke* is a quintessential example of copyright infringement – *i.e.*, using copyrighted content "to get attention [and] avoid the drudgery in working up something fresh." *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 580 (1994). This lawsuit is to hold Frogan accountable for her infringement of *The Nuke* and the H3Snark Mods accountable for their contributory infringement.

JURISDICTION AND VENUE

6. This action arises under the Copyright Act, 17 U.S.C. § 101, *et seq.*

7. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331, 1338(a-b).

8. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(c) and 1400(a) because a substantial part of the acts and omissions giving rise to the claims occurred in this judicial district.

PARTIES

9. TEI is a California corporation with its principal place of business located in Los Angeles County, CA. TEI is a production company that produces content for social media, namely YouTube.

10. Frogan is an online streamer who releases content on social media platforms, namely Twitch, and resides in Los Angeles, California.

11. The H3Snark Mods are comprised of Does Nos. 1-10. The true names and exact location of Does Nos. 1-10 are presently unknown to TEI, which therefore sues said Doe defendants by such fictitious names, and will seek leave to amend this Complaint to show their true names and exact locations when the same have been ascertained. Below is a summary of what is known about Does Nos. 1-6.

a. Doe No. 1 is female, the founder of H3Snark and one of the H3Snark Mods. She previously used the Reddit username "u/ozempicdealer" – which Doe No. 1 subsequently deleted. Her last post using this handle was on February 12, 2025. Doe No. 1 also uses the Discord handle "yoggiebearx" and the screen name "parishilton."

b. Doe No. 2 is female, resides in Canada and is the head moderator of the H3Snark Mods. Doe No. 2 currently uses the following Reddit usernames: (1) u/h3snarkmodteam2; (2) u/RomanPeee; and (3) u/Right_Salamander (currently idle). Previously, Doe No. 2 used the following Reddit usernames – which were either deleted by Doe No. 2 or suspended by Reddit for violating its Content Policy: (1) u/kavkav2 (deleted); (2) u/h3snarkmodteam3 (deleted); (3) u/Wrong_Salamanderr (deleted); (4) u/Right_Salamanderr (suspended); (5) u/PurePress (suspended); and (6) u/KitchenMukbangStar (deleted). On Discord, Doe No. 2 uses the screen names "Sally" and "allitern."

c. Doe No. 3 began as a user of H3Snark and was subsequently made an H3Snark Mod. Initially, Doe No. 3 used the Reddit username

"u/sarahornejewetts" – which she subsequently deleted. After deleting this account, Doe No. 3 used the Reddit username "u/jewettsarahorne."

d. Doe No. 4's account name on Discord is "rozzwhalenm."

e. Doe No. 5 is male and goes by the name Tony. Doe No. 5 was made an H3Snark Mod. His account name on Discord is "frompu."

f. Doe No. 6 was made an H3Snark Mod. Doe No. 6's account name on Discord is "No_Reception."

g. Doe Nos. 7-10 are the remaining H3Snark Mods.

FACTUAL ALLEGATIONS

Background of TEI

12. TEI was founded in 2016 by Ethan and Hila Klein. The Kleins rose to prominence on YouTube with two channels, "h3h3Productions" (their primary channel) and "Ethan and Hila"[2] (their secondary channel). The Kleins created highly stylized reaction videos to other YouTube videos. The Kleins' reaction videos "intersperse[d] relatively short segments" of the original video "with long segments of the Kleins' commentary." *Hosseinzadeh*, 276 F.Supp.3d at 40. After TEI was established, the Kleins assigned both channels to TEI.

13. In 2016, the Kleins were sued for copyright infringement, defamation and misrepresentation under 17 U.S.C. Section 512(f) by Matt Hosseinzadeh p/k/a Matt Hoss/The Bold Guy ("Matt Hoss"). The copyright claim concerned a reaction video uploaded to their "Ethan and Hila" YouTube channel. The video, entitled *The Big, The Bold, The Beautiful* (the "Klein video"), was a critical and humorous reaction to Matt Hoss' video, *Bold Guy vs. Parkour Girl* (the "Hoss video"). As the Court in *Hosseinzadeh* explained:

> The Klein video opens with commentary and discussion between Ethan and Hila Klein, followed by segments of the Hoss video which they play, stop, and continue to comment on and criticize. The Klein video, which is almost fourteen minutes long, intersperses relatively short segments of the Hoss video with long segments of the Kleins'

[2] The "Ethan and Hila" channel was later renamed to "Hila Klein."

> commentary, ultimately using three minutes and fifteen seconds of the five minute, twenty-four second long Hoss video. The Klein video is harshly critical of the Hoss video, and includes mockery of [Matt Hoss'] performance and what the [Kleins] consider unrealistic dialog and plotlines. In addition, defendants' commentary refers to the Hoss video as quasi-pornographic and reminiscent of a "Cringetube" genre of YouTube video known for "cringe"-worthy sexual content. As critical as it is, the Klein video is roughly equivalent to the kind of commentary and criticism of a creative work that might occur in a film studies class.

Hosseinzadeh, 276 F.Supp.3d at 40 (footnote and internal citations omitted).

14. On August 23, 2017, the Court granted summary judgment for the Kleins on all of Matt Hoss claims. *Hosseinzadeh*, 276 F.Supp.3d at 45-48. For the copyright infringement claim, the Court found the Klein video made a fair use of the Hoss video.

15. In 2017, TEI established *The H3 Podcast* channel on YouTube. On the new channel, TEI produced podcast episodes that were less structured than the reaction videos the Kleins previously made. To ensure any use of unlicensed copyrighted content qualified as fair use, TEI formulated and refined best practices based on the principles from *Hosseinzadeh*, which included: (1) whenever feasible, prescreening the original work and outlining the criticism and commentary before the broadcast; (2) ensuring the commentary was directly related to the style and/or substance of the original work; (3) only broadcasting the portion of the original work that would be subject to critique; (4) pausing the original work frequently to provide critique; and (5) ensuring that the duration of commentary was substantially longer than the portion of the original work show immediately before the commentary.

Frogan: ضربتني و بكت سبقتني و اشتكت

16. Frogan began streaming in June 2019 and on a more regular basis in August 2021. Frogan's career peaked in August 2022 when she averaged 738 viewers a stream. Ever since, Frogan has steadily lost popularity. In January 2025 (*i.e.*, the month of Frogan's "group viewing session" of *The Nuke*), Frogan

averaged 160 viewers a stream.[3]

17. Frogan holds herself out as an expert. The area of her expertise, however, has yet to reveal itself. She claims to be a "public health expert,"[4] yet, Frogan admits her academic and professional career in public health was stunted by her lack of self-discipline. According to Frogan, her academic advisor conducted an intervention to ensure she would complete her master's degree. Frogan also admitted to abandoning her brief career in public health after her "boss wanted to discuss [her] performance with the manager of [her] department."[5]

18. Frogan frequently portrays herself as a victim, particularly to cast herself as a Muslim woman persecuted by "Zionists." The inconsistencies in her evolving narratives, however, reveal that she is not a victim at the hand of others – but her own. The following examples illustrate this pattern:

a. The Professor who Failed Her: On August 7, 2016, Frogan posted on X that her "professor made [her] write about the Arab Israeli conflict and gave [her] a **D** on the ***paper***" when she was "the only hijabi in the class."[6] Nearly a year later, the story changed to make the professor seem worse. On June 10, 2017, Frogan posted on X that her professor gave her an "**F**" because what she "said about Israel was '***wrong***.'"[7] Several years later, the story mutated further to make the professor seem divorced from reality. On May 8, 2021, Frogan posted on X that her "professor assigned" her, "the only Arab in the class, to do a ***project*** about the Arab/Israeli conflict and failed [her] when [she] talked about ***how Palestine is occupied by Israel***."[8] In this instance, Frogan provided a screenshot summarizing two slides from this "paper" or "project" – one of which contains a glaring

[3] TwitchTracker, Frogan, *available at*: https://twitchtracker.com/frogan/statistics.
[4] Frogan, "About," *available at:* https://www.twitch.tv/frogan/about
[5] Visionaries, *How Frogan Went from Public Health Expert to Streamer Awards Winner | Visionaries Podcast*" (Mar. 25, 2023) at 2:34-2:44, 4:10-4:32 *available at*: https://youtu.be/LMYi1r2DCnw?si=vr1BPwjW1jz81WHR&t=154
[6] *See* https://x.com/fr0gan/status/762514029881401344.
[7] *See* https://x.com/fr0gan/status/873770100775686145
[8] https://x.com/fr0gan/status/1391231483910754304

inaccuracy that Frogan admits was wrong. In the slide, Frogan claimed that there were "[o]ver ***400 million Palestinians*** … liv[e] in refugee camps in occupied territories and other Arab states." According to the UNWRA, there are only ***1.5 million*** Palestinians living in refugee camps.[9] This glimpse into Frogan's paper and its obvious inaccuracy reveals why Frogan received a low grade: her paper was "wrong" because it contained factual inaccuracies. Instead, Frogan painted herself the victim of a fanatical professor who discriminated against her and promulgated a counterfactual narrative that Israel is not occupying the West Bank and Gaza.[10]

b. The "Zionist" Therapist: On October 24, 2019, Frogan posted on X that she "went to therapy for the first time" and, "after talking about [her] dad fleeing the Israel Lebanon war[,]" she was "taken aback" when her therapist responded with: "***Im [sic] Israeli do you have any issues with me being your therapist***"[11] (original spelling; added emphasis).

i. As a self-described "public health expert," Frogan should have realized that her therapist was adhering to: (1) the American Counseling Association's Code of Ethics (Sections A.1.a, A.2.a-c);[12] and (2) the American

[9] UNWRA, "Palestinian Refugees" *available at*: https://www.unrwa.org/palestine-refugees

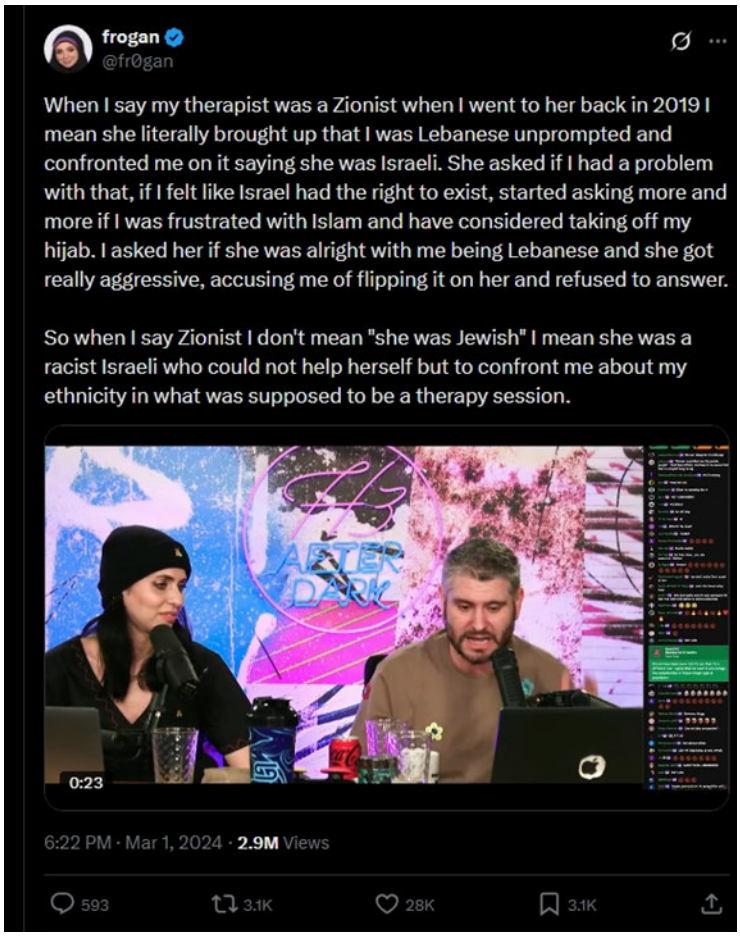
[10] Frogan repeatedly exhibits a fundamental lack of understanding of Middle East and Lebanon. For example, on October 15, 2024, Frogan watched a speech by Israeli Prime Minister Benyamin Netanyahu that referenced the Druze. In response, Frogan began to say "Who the fuck are…" before being cut-off by her co-hosts who explained they discussed the Druze in the prior episode. Ayyrabs Podcast, *What is Israel's Plan with Lebanon?* (Oct. 15, 2024), at 44:41-44:57 *available at*: https://youtu.be/zrnc6j6zNy4?si=I6AzzncQIdju9rRE&t=2681. Wikipedia, "History of Lebanon: Late 19th century to early 20th century," *available at*: https://en.wikipedia.org/wiki/History_of_Lebanon#Late_19th_century_to_early_20th_century. The Druze (along with the Maronite Catholics) founded modern Lebanon in the early 18th century. Muslims have historically oppressed the Druze as apostates. Wikipedia, "Druze: Relationship with Muslims," *available at*: https://en.wikipedia.org/wiki/Druze#Relationship_with_Muslims

[11] *See* https://x.com/fr0gan/status/1187442866341236743

[12] American Counseling Association, *2014 ACA Code of Ethics*, *available at*: (continued).

Psychological Association's Ethical Principles of Psychologists and Code of Conduct (Principles A, E, Rules 3.01, 3.04, 3.06).[13]

ii. Several years later, Frogan's story about her therapist mutated. On February 29, 2024, Frogan posted on X about her "***bad experience with a Zionist therapist***."[14] (added emphasis). When Ethan responded that Frogan was using "Zionist" as a dog-whistle for Jews (which was clearly the case), Frogan made another post that that painted the therapist as absurdly rabid and unethical.[15] Below is a true and correct screenshot of the post.


frogan
@fr0gan
When I say my therapist was a Zionist when I went to her back in 2019 I mean she literally brought up that I was Lebanese unprompted and confronted me on it saying she was Israeli. She asked if I had a problem with that, if I felt like Israel had the right to exist, started asking more and more if I was frustrated with Islam and have considered taking off my hijab. I asked her if she was alright with me being Lebanese and she got really aggressive, accusing me of flipping it on her and refused to answer.
So when I say Zionist I don't mean "she was Jewish" I mean she was a racist Israeli who could not help herself but to confront me about my ethnicity in what was supposed to be a therapy session.
0:23
6:22 PM · Mar 1, 2024 · 2.9M Views
593
3.1K
28K
3.1K

19. Prior to October 7th, Frogan was an effusive fan of Ethan and the

https://www.counseling.org/docs/default-source/default-document-library/ethics/2014-aca-code-of-ethics.pdf?sfvrsn=55ab73d0_1

[13] American Psychological Association, "Ethical Principles of Psychologists and Code of Conduct," *available at*: https://www.apa.org/ethics/code

[14] *See* https://x.com/fr0gan/status/1763389138915779043

[15] https://x.com/fr0gan/status/1763751586617332205

podcast series he co-hosted with Hasan Piker p/k/a HasanAbi ("Hasan"), entitled *Leftovers*. Once October 7th occurred, Frogan's social media activity demonstrated her support for Hamas and endorsement of blood libel conspiracy theories. Below are some examples:

a. At 2:28 a.m. PST/5:28 a.m. EST on October 7th (*i.e.*, when Jews and Israelis were gripped by panic and fear for their loved ones), Frogan posted on X: "***leftists preach and foam at the mouth at the thought of a revolution happening in america [sic], but as soon as it happens in the middle east what they're doing is wrong***."[16] Due to the insensitivity and timing of the post, Ethan decided to quietly unfollow Frogan.

b. Shortly thereafter, Frogan liked a post on X by Aleksa Vulović p/k/a Boy Boy that was posted on October 7th, which stated: "It's game over for Israel, James Bond is officially fighting for Hamas." Below is a true and correct screenshot of the post.

frogan
100.8K Likes
Following
Boy Boy @BoyBoy_Official · Oct 7, 2023
It's game over for Israel, James Bond is officially fighting for Hamas
Global: Military-Info @Global_Mil_Info · Oct 7, 2023
Footage of a hamas infiltrator using a motorized hang glider to get into Israel.
This is insane.
0:12
27
252
7.4K
357K

[16] *See* https://x.com/fr0gan/status/1710587819385614829.

c. On October 11, 2023, Frogan made a public scene over Ethan unfollowing her and posted on X: "tfw [that feeling when] one of your favorite content creators unfollows for being pro palestine. LMAO."[17] (original spelling). She then went to Hasan's Discord to indulge in self-pity and pleaded with Ethan to refollow her.[18]

d. On November 17, 2023 (when it was falsely reported that Israel bombed the Al-Shifa Hospital), Frogan liked a tweet spreading grotesque blood libel that falsely claimed Israel "***admitted to harvesting skin and organs from dead Palestinians to use for skin grafts and organ transplants***" and "***the majority of skin in Israel skin banks was stolen from Palestinians they killed***." Below is a true and correct screenshot of the post.

frogan
100.6K Likes
Following
475
32K
196K
6.8M
Nyx @BigArtGeek · Nov 17, 2023
Remember that Israel has admitted to harvesting skin and organs from dead Palestinians to use for skin grafts and organ transplants and the majority of skin in Israeli skin banks was stolen from Palestinians they killed
Free Palestine @shiginope · Nov 17, 2023
"ISRAEL" IS STEALING PALESTINIAN CORPSES FROM AL-SHIFA HOSPITAL FOR GOD KNOWS WHAT.
THERE'S NO FUEL, WATER, OR ELECTRICITY. INTERNET HAS BEEN CUT OFF. THERE IS NOT ENOUGH FOOD....
Show more
Exhaustion of water and electricity in the main buildings of the Complex.
The hospital is almost empty of patients, and the internet is still cut off.
The food that arrived is insufficient for about 40% of those inside the hospital.
The overall situation is unsafe, and surgeries cannot be performed due to the cutting-off of electricity.
Children are suffering from severe intestinal infections due to the lack of clean water.
35
21K
31K
1.1M

[17] *See* https://x.com/fr0gan/status/1712060807758905494

[18] Star Crossed, *Who is Frogan? The history behind Hasan's VILEST Mod [Stardust]*, (Feb. 14, 2025), at 24:59-25:34, *available at*: https://youtu.be/TnBVnQBJKtY?si=ukqOfomDYXp-LTvU&t=1499; *see also* Star Crossed, *Frogan: Cruel, Bigoted, and Loving It [Stardust]*, (Feb. 14, 2025) at 11:06-14:29, *available at*: https://www.youtube.com/watch?v=_1mVeSYKCEg&t=666s

20. Frogan serves as one of the moderators of Hasan's chat. Far from being neutral arbiter, Frogan weaponizes her role as Hasan's enforcer to ruthlessly silence dissent and cruelly target her enemies – while elevating those who excuse and justify terror and violence. For example, on November 9, 2023 (*i.e.*, after Frogan created a public controversy over Ethan unfollowing her), Hasan and Ethan discussed the Israel/Palestine conflict. Hasan's chat was replete with hateful and bigoted comments about Ethan, which Frogan refused to moderate out of vindictiveness towards Ethan.[19]

Background of H3Snark

21. H3Snark is part of a genre of message boards – known as subreddits – on the website, Reddit. Snark subreddits comprise of "fallen fans" of a particular entertainer. Over time, there have been numerous snark subreddits regarding TEI's podcasts and of the Kleins. Many were banned by Reddit for violating its Content Policy – such as r/Frenemies and r/Frenemies2.

22. H3Snark was created on August 30, 2023 by Doe No. 1 – who was a fanatical Trisha Paytas ("Trisha") fan. Doe No. 1 became a "fallen fan" when the TEI series, *Frenemies* (which was co-hosted by Ethan and Trisha), ended abruptly in June 2021.

23. H3Snark became a haven for "fallen fans" of TEI's podcasts and the Kleins. While the average viewer would move on with their lives after becoming disinterested in a podcast, H3Snark "fallen fans" religiously watch TEI produced content with orgiastic hatred. H3Snark enables these deranged and chronically unemployed fallen fans to share their perverse pleasure of hate-watching TEI content with others by providing infringing clips and links to TEI content.

24. Beginning in the fall of 2023, H3Snark experienced a surge of new users who were "fallen fans" of the TEI series, *Leftovers.* As mentioned, the show

[19] HasanAbi VODs, *HasanAbi November 9, 2023 – Israel Palestine, Debating Ethan H3H3 on Israel, 3rd GOP Debate* (Nov. 10, 2023), at 4:11:44-4:57:39, *available at*: https://youtu.be/4y7v0ewLFOQ?si=x71_2gsDqgXxI8GW&t=15104

was co-hosted by Ethan and Hasan (who is the most prominent alt-left streamer on the website, Twitch). On September 14, 2023, Ethan and Hasan debated various issues concerning China and Taiwan, such as whether Taiwan should be independent, the propriety of China's subjugation of Tibet and the genocide of the Uyghurs.[20] Due to Ethan pushing back on Hasan's pro-China positions, several *Leftover* fans who had an ecclesiastical parasocial relationship with Hasan flocked to H3Snark because they felt Ethan was critiquing them personally.

25. The surge of new users to H3Snark exploded after October 7, 2023. The Kleins are dual Israeli-American citizens. Hila was born and raised in Israel, where she served as a secretary during her mandatory conscription into the Israeli Defense Forces ("IDF").[21] While both Ethan and Hila are highly supportive of Palestinian self-determination and extremely critical of Israel and its government, the Kleins support a two-state solution as the best interim solution to the conflict.[22]

26. In the wake of October 7th, Hasan emerged as the modern incarnation of The Grand Mufti Hajj Amin Al-Husseini ("Al-Husseini").[23] Like Al-Husseini,

[20] H3 Podcast, "Joe Biden Is Getting Impeached – Leftovers #57," at 50:06 (September 14, 2023), *available at*: https://www.youtube.com/live/EeFuFKH-uOo?si=J3-Z-J7jWtkpv_Bu&t=3006

[21] H3 Podcast Highlights, *Hila From H3H3 Discusses Her Time In the Israeli Military (IDF)*, YouTube (Apr. 23, 2022), at 0:40–1:04, https://www.youtube.com/watch?v=ytOl5hbTrCY.

[22] H3 Podcast, *i made a mistake. i'm sorry. – H3TV #93* (October 9, 2023), at 2:03:40-2:03:58, 2:05:14-2:05:20, 3:35:56-3:36:17, *available at*: https://www.youtube.com/live/ZNFeRPMOu8g?si=4jE4j8SsuGKOuiPL; H3 Podcast, *Israel vs. Gaza – Leftovers #61* (Oct. 12, 2023), at 8:26-9:20, 1:15:22-1:15:38, 2:52:33-2:52:41, *available at*: https://www.youtube.com/live/JFznOHunD_c?si=vtd4HrejPjU6kzzx; H3 Podcast, *Jay Shetty Exposed By Ex-Girlfriend & He Lied About Being A Monk – After Dark #139* (March 2, 2024), at 2:24:16-2:24:31, *available at*: https://www.youtube.com/live/5XrPXgcKwVc?si=893H-4SIKBG46jLD

[23] World War Two, *The Nazi-Islam Alliance? – Amin al-Husseini – WW2 Biography Special* (Dec. 21, 2021), *available at*: https://youtu.be/K07j-wuL8sw?si=en3seNLjS0JRmxHj; The World History Channel, *Why Did The Grand Mufti Of Palestine Collaborate With Nazi Germany?* (Jan. 30, 2025), (continued).

Hasan became a passionate advocate and highly charismatic leader of the Palestinian cause.[24] Like Al-Husseini, Hasan used his massive platform to spread genocidal rhetoric about anyone advocating for the right of Jewish self-determination in their ancestral homeland (*i.e.*, Zionists).[25] The primary difference between Hasan and Al-Husseini is that Al-Husseini worked with the Nazis and advocated the annihilation of Jews[26]– while Hasan advocates the annihilation of all Zionists. Since the vast majority of Jews in the United States say caring about Israel is "essential" or "important," this would necessarily include the vast majority of

available at: https://youtu.be/aVeXPFY7shI?si=ZT4GYoa27xKF6-kG; Casual Historian, *How the Zionists responded to World War Two and the Holocaust* (Feb. 8, 2025), *available at*: https://youtu.be/w6NrUiUhYiA?si=EswHI27G-9MW8OH4; Casual Historian, *The Palestine Mandate: The Origins of the Israeli-Palestinian Conflict (Supercut)* (Dec. 28, 2023), *available at*: https://youtu.be/vUuR-3tw9p8?si=EzAVrpG5IZHUKa8Y; United States Holocaust Memorial Museum, Holocaust Encyclopedia, "Hajj Amin al-Husayni: Wartime Propagandist," *available at*: https://encyclopedia.ushmm.org/content/en/article/hajj-amin-al-husayni-wartime-propagandist?parent=en%2F11094; United States Holocaust Memorial Museum, Holocaust Encyclopedia, "Hajj Amin Al-Husayni: Arab nationalist and Muslim Leader," *available at*: https://encyclopedia.ushmm.org/content/en/article/hajj-amin-al-husayni-arab-nationalist-and-muslim-leader?parent=en%2F11104; Wikipedia, "Amin al-Husseini," *available at*: https://en.wikipedia.org/wiki/Amin_al-Husseini

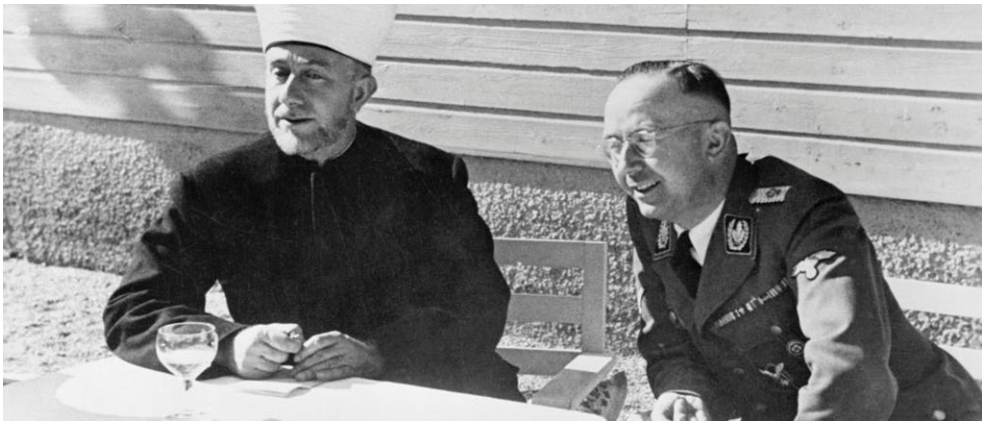
[24] Benny Morris, *1948: A History of the First Arab–Israeli War*, p. 23 (Yale Univ. Press 2008).

[25] Philip Mattar, *The Mufti of Jerusalem: Al-Hajj Amin Al-Husayni and the Palestinian National Movement*, pp. 105–06 (Rev. ed. Columbia Univ. Press 1992); Britannica, "Zionism," *available at*: https://www.britannica.com/topic/Zionism; Jewish Virtual Library, "Zionism: A Definition of Zionism," *available at*: https://www.jewishvirtuallibrary.org/a-definition-of-zionism; *see also* Tracy Wilkinson, Los Angeles Times, "Is Zionism patriotism or racism? Big disagreements over a word in use for 125 years" (May 22, 2024), *available at:* https://www.latimes.com/world-nation/story/2024-05-22/zionism-disagreement-over-a-word-in-use-for-125-years; Jewish Virtual Library, "Zionism: Table of Contents," *available at*: https://www.jewishvirtuallibrary.org/zionism

[26] Jeffrey Herf, *Nazi Propaganda for the Arab World*, p. 213 (Yale Univ. Press 2009); Kause-Michael Mallman and Martin Cuppers (Translated by Krista Smith) *Nazi Palestine* (2010); David Patterson, *A Genealogy of Evil: Anti-Semitism from Nazism to Islamic Jihad* (Cambridge Univ. Press 2010).

Jews[27] – even if they support the Palestinian cause and vehemently condemn the actions of the Israeli government.

Al-Husseini Meets Adolf Hitler, November 28, 1941



Al-Husseini With His Close Friend Heinrich Himmler, 1943

"Arabs, rise as one man and fight for your sacred rights. Kill the Jews wherever you find them. This pleases God, history and religion. This saves your honor.

[27] Backa A. Alper, Pew Research Center, "How U.S. Jews are experiencing the Israel-Hamas war" (April 2, 2024), *available at*: https://www.pewresearch.org/short-reads/2024/04/02/how-us-jews-are-experiencing-the-israel-hamas-war/; Justin Nortey, Pew Research Center, "U.S. Jews have widely differing views on Israel" (May 21, 2021), *available at*: https://www.pewresearch.org/short-reads/2021/05/21/u-s-jews-have-widely-differing-views-on-israel/; The Jewish Majority, "New Poll: Jewish Voice for Peace Does Not Represent Vast majority of U.S. Jewish Community" (Feb. 12, 2025), *available at*: https://img1.wsimg.com/blobby/go/2921c434-f7d7-43f4-ade6-3a5591444c85/downloads/97dc308b-4559-4e42-a55e-53c77f75c044/Press%20release%202.11.2025.pdf?ver=1739292818681

God is with you." – Al Husseini (March 1, 1944 on Nazi radio)

27. On October 12, 2023, the last episode of *Leftovers* aired. It comprised of a discussion between Ethan and Hasan regarding the Israel/Palestinian conflict and the events of October 7th.[28] During the discussion, Ethan expressed his support of the Palestinian cause and empathy for their suffering, along with condemning Israeli Prime Minister Benyamin Netanyahu. At the same time, Ethan attempted to humanize the victims of October 7th to Hasan in the hope that empathy and mutual understanding could begin the heal the divide. Hasan was unpersuaded and the relationship with Ethan and Hasan began to deteriorate.

28. In the aftermath of the falling out between Ethan and Hasan, H3Snark became a radioactive hub of "fallen fans" of TEI content and the Kleins. It became a focal point for spreading vicious lies, outlandish conspiracy theories and hallucinatory misrepresentations about the Kleins.

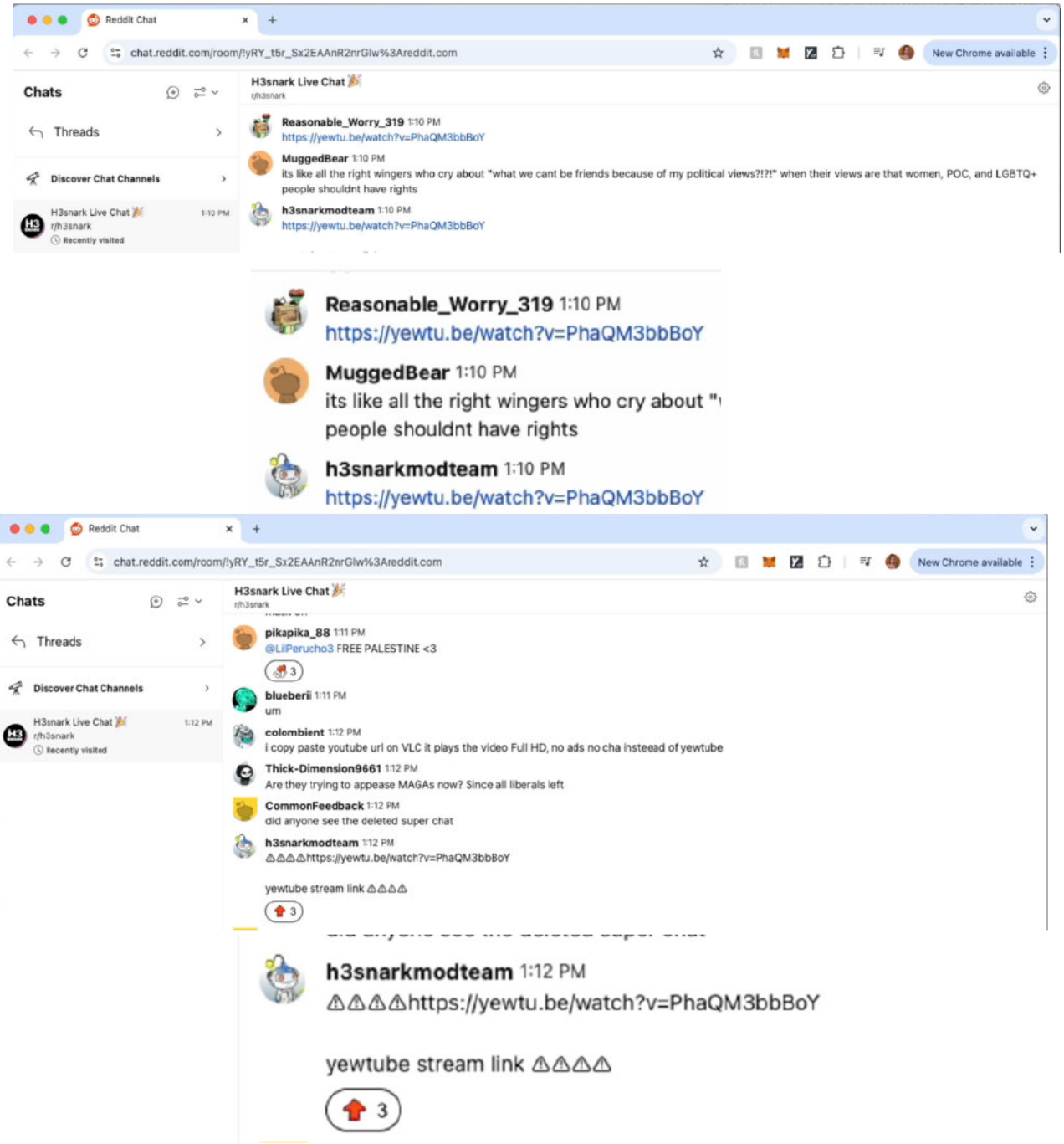
The Rampant Copyright Infringement on H3Snark

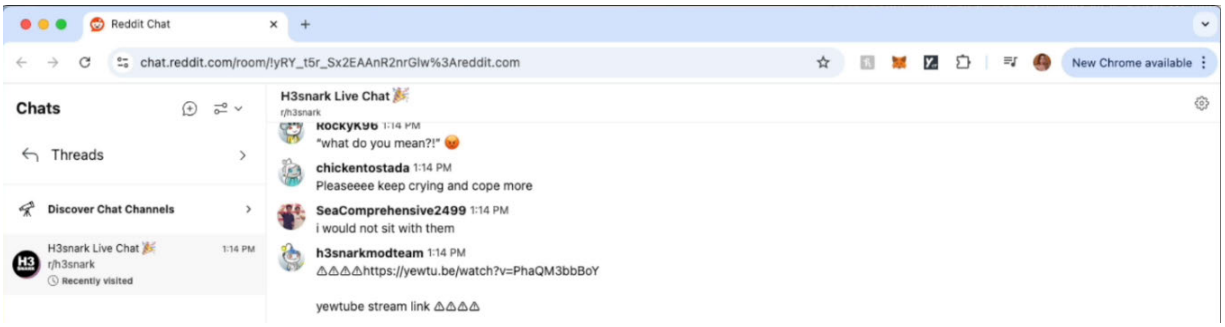
29. Despite their hatred towards the Kleins, the users of H3Snark had an insatiable appetite for TEI's content. The H3Snark users, however, did not want TEI to receive any views or advertising revenue from their consumption of TEI's content. As a result, H3Snark became a locus of copyright infringement of TEI content – as detailed below.

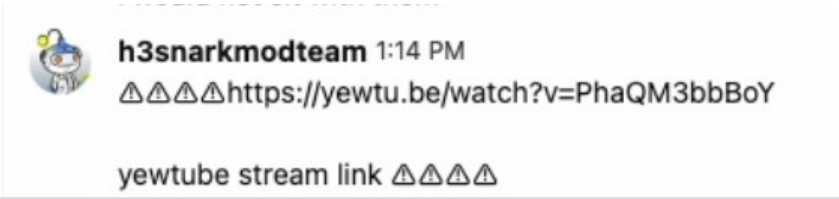
30. One method the H3Snark Mods employed to consume TEI content was to share links of TEI content on YewTube – a website that provides unauthorized access to YouTube videos and publicly performs them, which constitutes copyright infringement. *See Hunley v. Instagram, LLC*, 73 F.4th 1060, 1073-74 (9th Cir. 2023). YewTube had particular appeal to H3Snark Mods and H3Snark users because a video watched on YewTube does not result in a view or advertising revenue to the original on YouTube.

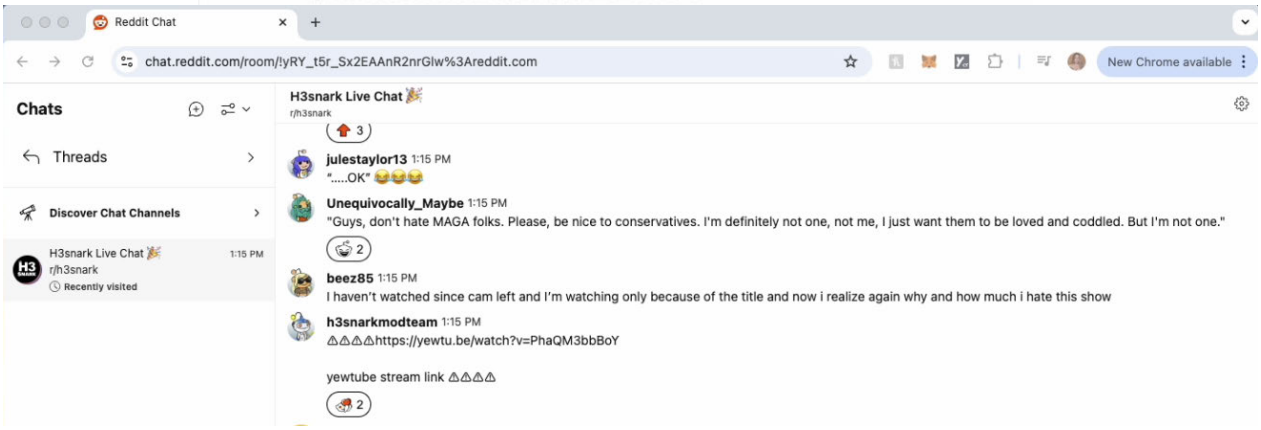
[28] H3 Podcast, "Israel vs Gaza – Leftovers #61" (October 12, 2023), *available at*: https://www.youtube.com/live/JFznOHunD_c?si=Cbfod032xwJ5e-FQ

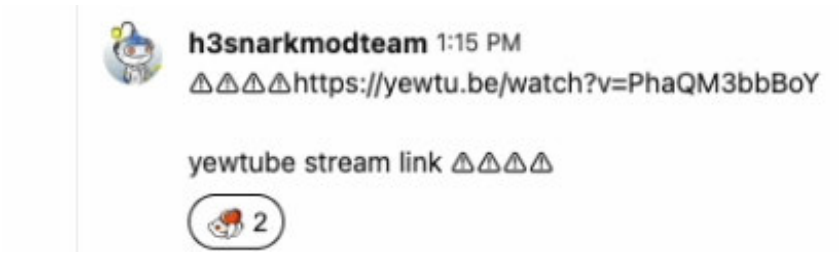
31. H3Snark Mods conducted live chats during TEI's live broadcasts. During the live chats, the H3Snark Mods would spam the chat with YewTube links of the broadcast. Once the livestream ended, the H3Snark Mods concealed the evidence of their copyright infringement by deleting the live chat logs. Below are true and correct screenshots of the H3Snark mods spamming the live chat with YewTube links to TEI copyrighted content.







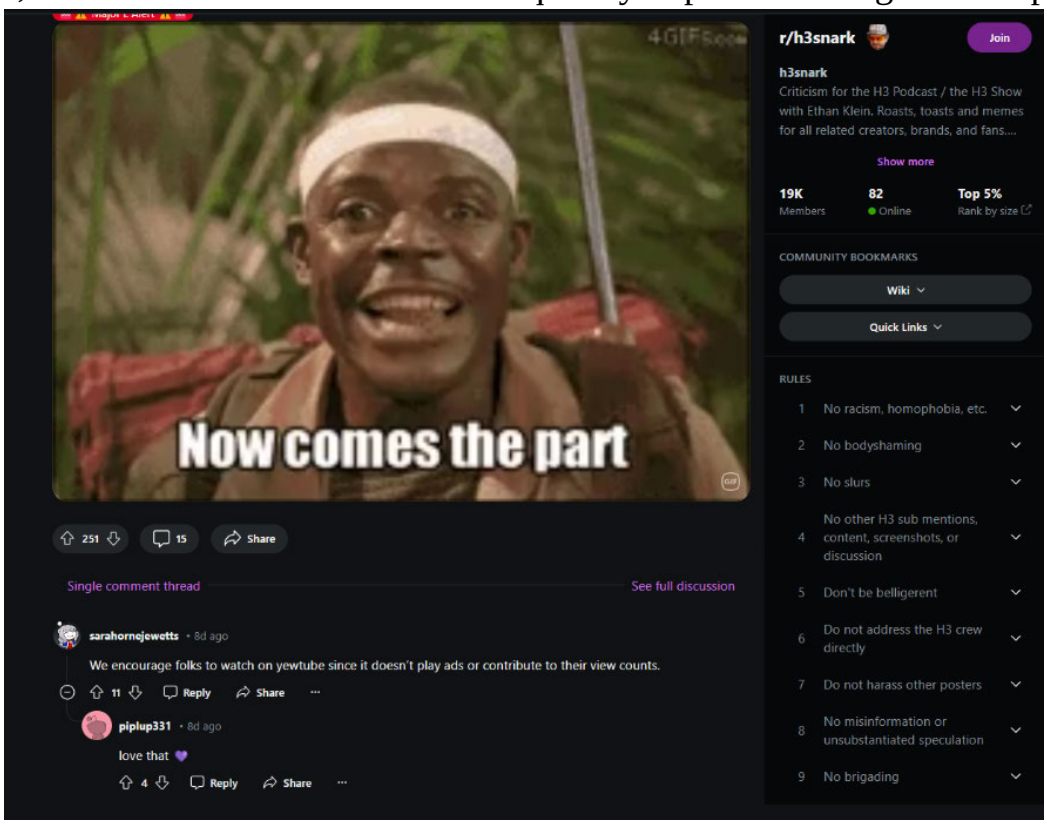

Reddit Chat
chat.reddit.com/room/!yRY_t5r_Sx2EAAnR2nrGlw%3Areddit.com
New Chrome available
Chats
Threads
Discover Chat Channels
H3snark Live Chat
r/h3snark
Recently visited
H3snark Live Chat
r/h3snark
julestaylor13 1:15 PM
".....OK"
Unequivocally_Maybe 1:15 PM
"Guys, don't hate MAGA folks. Please, be nice to conservatives. I'm definitely not one, not me, I just want them to be loved and coddled. But I'm not one."
beez85 1:15 PM
I haven't watched since cam left and I'm watching only because of the title and now i realize again why and how much i hate this show
h3snarkmodteam 1:15 PM
⚠⚠⚠⚠https://yewtu.be/watch?v=PhaQM3bbBoY
yewtube stream link ⚠⚠⚠⚠



32. Through various comments to posts, Doe No. 3 (*i.e.*, u/sarahornejewetts) encouraged H3Snark users to use YewTube as an alternative to watching the TEI's video on its official channel. Doe No. 3's comments were later wiped. Due to Doe No. 3's efforts, the user was anointed as one of the H3Snark Mods. Some examples are contained below.

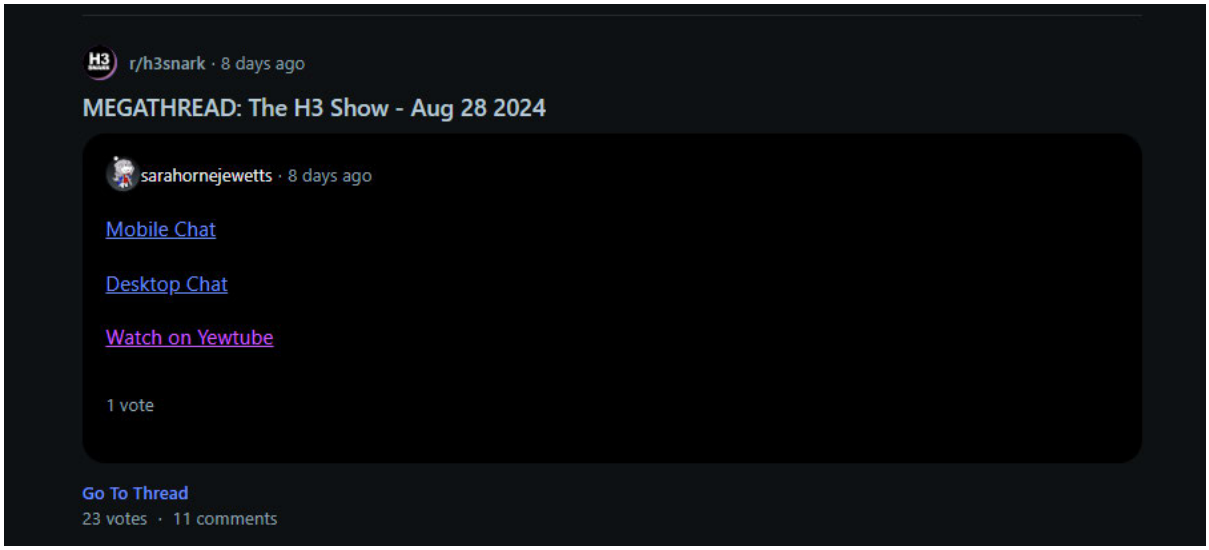
a. In August 2024, the u/PearlUnicorn created the post: "For those who wonder why Snarkers watch, moments like the second button failure." Below

is a true and correct screenshot of Doe No. 3 stating: "***We encourage folks to watch on yewtube since it doesn't play ads or contribute to their view counts***." As can be noted, Doe No. 3's comment was subsequently wiped from August 2024 post.

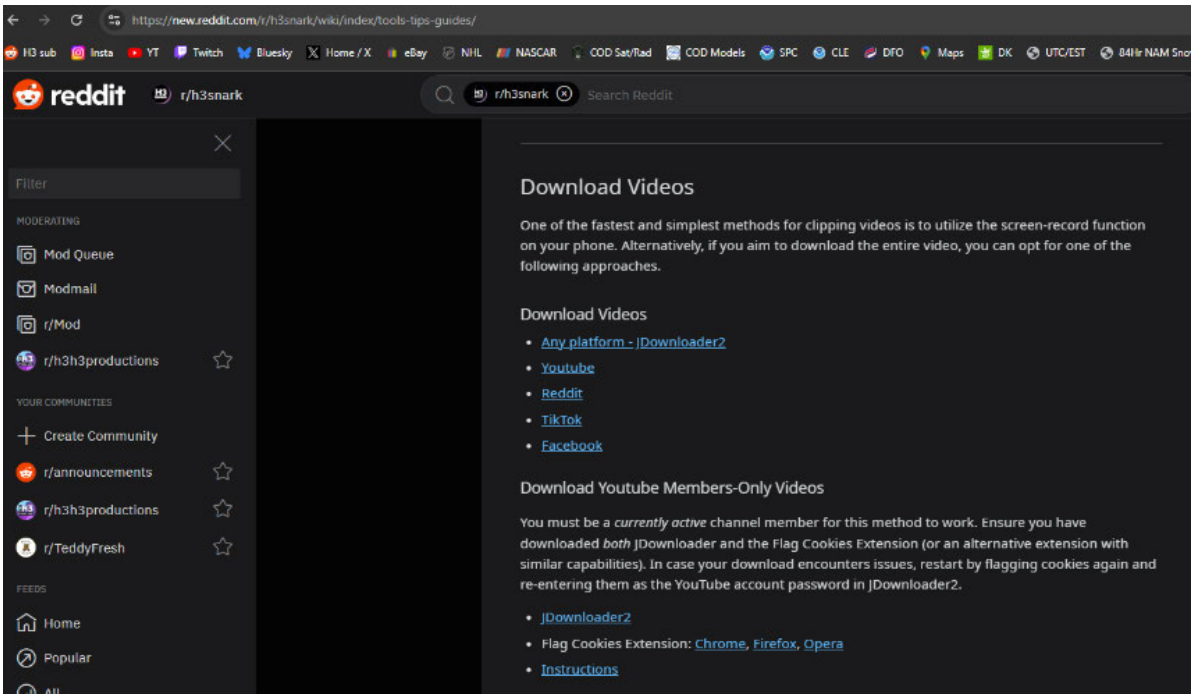


b. On August 28, 2024, the H3Snark Moderators created a post entitled "MEGATHREAD: The H3 Show – Aug 28 2024." Below is a true and correct screenshot of Doe No. 3 providing a link to the TEI video *Content Court: Jack Doherty – H3 Show #48* on YewTube.[29] As can be noted, Doe No. 3's comment has been wiped from the August 28, 2024 post.

[29] While Doe No. 3's post just contained a hyperlink labeled "Watch on Yewtube," the link would direct users to https://yewtu.be/watch?v=DCw4csgcEsk.



33. Under the H3Snark wiki page for "tools-tips-guides," H3Snark Mods also instructed H3Snark users on how to create clips of TEI content so these clips could be posted on H3Snark. At one point, the H3Snark Mods even instructed users how to download "Members-Only" content (*i.e.*, TEI content only accessible to paying members) so that they could be posted on H3Snark. To hide their inducement of copyright infringement, the H3Snark Mods deleted the portion on downloading "Members-Only" content from the guide. A true and correct screenshot of the portion regarding "Members-Only" content is provided below.


https://new.reddit.com/r/h3snark/wiki/index/tools-tips-guides/
reddit
r/h3snark
Search Reddit
Filter
MODERATING
Mod Queue
Modmail
r/Mod
r/h3h3productions
YOUR COMMUNITIES
Create Community
r/announcements
r/h3h3productions
r/TeddyFresh
FEEDS
Home
Popular
Download Videos
One of the fastest and simplest methods for clipping videos is to utilize the screen-record function on your phone. Alternatively, if you aim to download the entire video, you can opt for one of the following approaches.
Download Videos
Any platform - JDownloader2
Youtube
Reddit
TikTok
Facebook
Download Youtube Members-Only Videos
You must be a currently active channel member for this method to work. Ensure you have downloaded both JDownloader and the Flag Cookies Extension (or an alternative extension with similar capabilities). In case your download encounters issues, restart by flagging cookies again and re-entering them as the YouTube account password in jDownloader2.
JDownloader2
Flag Cookies Extension: Chrome, Firefox, Opera
Instructions

TEI Issues Takedown Notices for Infringing Posts and Comments on H3Snark

34. TEI began to fight back against the copyright infringement on H3Snark by issuing takedown notices pursuant to 17 U.S.C. Section 512(c)(3) ("DMCA Takedowns"). TEI was extremely surgical about which H3Snark posts would be subject to DMCA Takedowns. Relying on the most pertinent fair use decisions,[30] TEI issued DMCA Takedowns only for: (1) posts/comments that uploaded an entire TEI episode onto Reddit – particularly paywalled TEI content; (2) comments that provided a YewTube link to entire episodes of TEI content; or (3) posts that contained a clip of TEI content with a descriptive, non-critical title and the comments were locked by the H3Snark Mods or there were no comments after several hours.

a. August 1, 2024 DMCA Takedown: On August 1, 2024, TEI issued a DMCA Takedown for the H3Snark post entitled "H3 Live Show Behind the Scenes." The post contained a complete version of TEI's video *H3 Podcast BTS #53* – which was "Members Only" content (*i.e.*, accessible only to paying members of *The H3 Podcast* YouTube channel). On August 2, 2024 (*i.e.* one day later), Reddit honored this DMCA Takedown.

b. August 30, 2024 DMCA Takedown: On August 30, 2024, TEI issued a DMCA Takedown for a comment by Doe No. 3 (*i.e.*, u/sarahornejewetts) on the H3Snark Post entitled "MEGATHREAD: The H3 Show - Aug 28, 2024" (the "8/30/24 Takedown"). The comment contained a YewTube link to the TEI video *Content Court: Jack Doherty – H3 Show #48.*[31] On September 9, 2024 (*i.e.*, nine days later), Reddit honored the 8/30/24 Takedown.

[30] *In re DMCA Subpoena to Reddit, Inc.*, 441 F.Supp.3d 875, 883-886 (N.D. Cal. 2020); *Hughes v. Benjamin*, 437 F.Supp.3d 382, 390-394 (S.D.N.Y. 2020); *McGucken v. Pub Ocean Ltd.*, 42 F.4th 1149, 1157-1164 (9th Cir. 2022); *Warhol*, 598 U.S. at 525-550; *Elvis Presley Enterprises, Inc. v. Passport Video*, 349 F.3d 622, 627-631 (9th Cir. 2003); *Hosseinzadeh*, 276 F.Supp.3d at 41-42, 45-47; *Monge v. Maya Magazines, Inc.*, 688 F.3d 1164, 1170-1183 (9th Cir. 2012).

[31] The comment for u/sarahornejewetts (*i.e.*, Doe No. 3) no longer exists on the post, but a screenshot of it is show in connection with Paragraph 32.b, *supra*.

c. September 18, 2024 DMCA Takedown: On September 18, 2024, TEI issued a DMCA Takedown for the H3Snark post entitled "Ethan and Dan confirm that posting to snark will get you banned" (the "9/18/24 Takedown"). The post solely comprised of a clip from the TEI video *Ethan Debates Anti-Semitic Sneako Fan – H3 Show #55*. The post contained no comments because the H3 Snark Mods locked the post. Reddit never informed TEI whether the 9/18/24 Takedown was honored.

d. November 22, 2024 DMCA Takedowns: On November 22, 2024, TEI issued two DMCA Takedowns

i. First Takedown: The first DMCA Takedown was for the H3Snark post "ethan talks positively about celebrity poker tour's sponsor, a sports gambling app named fliff h3 show #83." The post contained a clip from the TEI video *We Play Poker w/ Ninja, Impractical Jokers, & More! – H3 Show #83*. The post contained two comments: (1) "Dude ur flair is actually fucking frying me rn" (original spelling); and (2) "The downfall is real man." The post contained no further comments because the H3Snark Mods locked the post. On November 29, 2024 (*i.e.*, seven days later), Reddit informed TEI that it honored this DMCA Takedown.

ii. Second Takedown: The second DMCA Takedown was for the H3Snark post entitled "Ethan describes his issues with Hasan as 'personal beef.'" This post contained a clip from the TEI video entitled *Logan Paul Posted F***KING INSANE Cringe – H3 Show #84*. At the time this DMCA Takedown was issued, the post had been up for over two hours and had no comments at that time (but 130 upvotes).[32] On December 5, 2024 (*i.e.*, nearly two weeks later), Reddit informed TEI that it honored this DMCA Takedown.

[32] After this DMCA Takedown was issued (but before Reddit honored it), the post received additional comments. A true and correct PDF printout of the post taken on November 22, 2024 is attached hereto as Exhibit A. *Compare* Ex. A *with* https://www.reddit.com/r/h3snark/comments/1gxofik/ethan_describes_his_issues_with_hasan_as_personal/

e. November 26, 2024 DMCATakedowns: On November 26, 2024, TEI issued two DMCA Takedowns.

i. First Takedown: The first DMCA Takedown was for the H3Snark post "LB says '[far leftists] hate israel because israel is backed by the west' and this can lead to antisemitism. Ethan agrees, then says freedom of religion, speech, press, and to 'control what happens in your own work space' would be under state-control in communism – h3 show #85." (original spelling and brackets). The post contained a clip from the TEI video entitled *I Haven't Been Well – H3 Show #85*. The post contained no comments because the H3Snark Mods locked the post. On December 6, 2024 (*i.e.*, ten days later), Reddit informed TEI that it honored this DMCA Takedown.

ii. Second Takedown: The second DMCA Takedown for the H3Snark post "Lena asks Lonerbox about civilians and doesn't get a direct answer: 'It's always civilians are dying… BUT… and then theres a reason for justifying it.'" (original ellipses and spelling) (the "Second 11/26/24 Takedown"). The post contained a clip from the TEI video entitled *I Haven't Been Well – H3 Show #85*. The post contained no comments because the H3Snark Mods locked the post. On December 6, 2024 (*i.e.*, ten days later), Reddit informed TEI that it honored this DMCA Takedown.

The H3Snark Mods' Efforts to Issue Fraudulent Counternotifications

35. The H3Snark Mods made a concerted effort to issue fraudulent counternotifications to TEI's DMCA Takedowns, as detailed below:

a. On January 15, 2025, Reddit informed TEI that a so-called counternotification was issued against both the 8/30/24 Takedown the 9/18/24 Takedown (the "First Fraudulent Counternotification").[33] The First Fraudulent Counternotification was issued on October 18, 2024 – *i.e.*, Reddit informed TEI nearly three months later.

[33] A true and correct copy of the First Fraudulent Counternotification is attached hereto as Exhibit B.

i. On its face, the First Fraudulent Counternotification failed to satisfy the requirements of 17 U.S.C. Section 512(g)(3) because it failed to include: (1) the issuer's address and telephone number; (2) consent to jurisdiction and service of process; and (3) a statement made under penalty of perjury.

ii. Further, the First Fraudulent Counternotifications contained numerous indicia of being fraudulent because: (1) it was a single counternotification for posts made by two different users (*i.e.* u/sarahornejewetts and u/obrienpotatoes); and (2) it misrepresented that the 8/30/24 Takedown was for the post and not the comment with the YewTube link.

iii. It was also evident the First Fraudulent Counternotification was issued by the H3Snark Mods because it stated: (1) "We are writing to contest the removal of two posts from ***our subreddit*** under alleged copyright claims" (emphasis added); (2) "***We believe these reports may have been filed by fans rather than the legitimate copyright holder***" (emphasis added) – despite the fact that TEI's counsel's contact information was provided in both the 8/30/24 Takedown and 9/18/24 Takedown; and (3) the name of the issuer was "Michael Anderson" – a generic name that would make it impossible to identify the issuer of the First Fraudulent Counternotification.

iv. On January 16-17, 2025 (*i.e.*, two days after receiving the First Fraudulent Counternotification), TEI explained in exacting detail the facts and law demonstrating the First Fraudulent Counternotification was invalid. On March 18, 2025 (*i.e.*, over two months later), Reddit responded that it agreed that the First Fraudulent Counternotification was invalid – but claimed that it would refuse to honor the 8/30/24 Takedown because the post only linked to TEI's video on YouTube. The same day, TEI explained to Reddit that this was false because the 8/30/24 Takedown explicitly stated it was directed at the comment by Doe No. 3 (*i.e.*, u/sarahornejewetts) and contained a YewTube link, including providing a screenshot for the comment. To date, Reddit has not responded.

b. Additionally, on March 18, 2025 (the same day Reddit informed TEI that the First Fraudulent Counternotification was invalid), Reddit notified TEI that another counternotification was issued regarding the 9/18/24 Takedown (the "Second Fraudulent Counternotification").[34] The Second Fraudulent Counternotification was issued on December 5, 2024 (*i.e.*, Reddit notified TEI three and a half months later).

i. The Second Fraudulent Counternotification contained no indicia that the issuer considered the four fair use factors prior to issuing the Second Fraudulent Counternotification – which is unlawful. *See Hosseinzadeh*, 276 F.Supp.3d at 36; *Hughes*, 437 F.Supp.3d at 394-395; *cf* *Lenz v. Universal Music Group*, 815 F.2d 1145, 1149, 1154-55 (9th Cir. 2016). Further, the language of the Second Fraudulent Counternotification demonstrated the issuer – u/obrienpotatoes – did not understand fair use in general, by stating: (1) "This was an abuse of the fair use system" (which is bizarre because u/obrienpotatoes was claiming fair use, not TEI); and (2) the conclusory assertion "Even so, it would still be allowed under fair use" without any analysis. This is further emphasized by an April 11, 2025 post on X by @obrienpotatoes1. In the post, @obrienpotatoes posted the cease and desist letter sent by TEI's counsel and defended the Reddit post by claiming it was only "A MINUTE AND A HALF LONG CLIP" – *i.e.*, only focusing on the amount used and not the other fair use factors.[35]

ii. The Second Fraudulent Counternotification also echoed language similar to the First Fraudulent Counternotification – indicating the H3Snark Mods worked with u/obrienpotatoes to issue the Second Fraudulent Counternotification: "This subreddit has also been mercy to many ***bad faith brigades*** recently, so ***I do not believe this appeal was filed by the actual copyright owner***" (emphasis added) – despite the 9/18/24 Takedown containing TEI's

[34] A true and correct copy of the Second Fraudulent Counternotification is attached hereto as Exhibit C.

[35] *See* https://x.com/obrienpotatoes1/status/1910711822212067372

counsel's contact information.

iii. Additionally, after the Second 11/26/24 Takedown was issued, one of the H3Snark Mods (who later deleted their account) left a comment on the post stating: "I reached out via DM to discuss how to appeal these, if you're willing to fill out the form." This further emphasizes the H3Snark Mods coordinated a campaign of issuing fraudulent counternotifications to enable H3Snark's copyright infringement of TEI's works.

c. The H3Snark Mods went on a public relations campaign to paint TEI's DMCA Takedowns as fraudulent to cover up their copyright infringement. To achieve this objective, the H3Snark Mods authored several posts misrepresenting the facts.[36]

d. After Ethan became vocal about pursuing claims against H3Snark, the H3Snark Mods began deleting their posts, comments and accounts *en masse* to perpetuate their false narrative and conceal their copyright infringement (along with other illegal activity, such as organized harassment and defamation).

e. On March 5, 2025, a YouTuber by the name of "The Law" posted a video on YouTube entitled *Dear H3Snark, I see you.*[37] In the video, The Law admits he was a former H3Snark user who came to reject the obsessive and destructive behavior he saw taking over the subreddit. He documented the acts of copyright infringement by H3Snark users and H3Snark Mods (and other unlawful conduct), including their attempts to conceal their unlawful conduct. The video

[36] https://www.reddit.com/r/h3snark/comments/1h851se/false_copyright_strike_tracker_megathread_ethan/; https://www.reddit.com/r/h3snark/comments/1fdmu80/h3ethan_klein_is_abusing_the_copyright_system_by/; https://www.reddit.com/r/h3snark/comments/1h79qk3/another_false_copyright_strike_likely_from_ethan/; https://www.reddit.com/r/h3snark/comments/1hvtb5v/confirmed_ethan_klein_hired_an_attorney_to_issue/

[37] The Law, *Dear H3Snark, I see you.* (March 3, 2025), *available at:* https://youtu.be/lfjbgNjo0Oc?si=zbNomCBmxySgCuvU

documents:

i. The H3Snark Mods deleted posts after Ethan announced plans to pursue legal action against H3Snark for harassment (1:18-1:41);

ii. How the H3Snark Mods abused the live chat feature on Reddit to promote harassment and defamatory statements, including promoting some of the egregious offenders into H3Snark Mods (2:02-4:54);

iii. How the H3Snark Mods use "sock puppet accounts" (*i.e.*, using a false online identity for deceptive purposes) to conceal their identities while engaging in harassment – which were deleted after Ethan announced he would pursue legal action against H3Snark (4:55-6:51); and

iv. How the H3Snark Mods purposefully lied about TEI's DMCA Takedowns to conceal their copyright infringement and obfuscate their intent to siphon views and ad revenue away from TEI (6:52-9:11).

TEI Creates and Registers *The Nuke*

36. By the fall of 2024, Ethan and Hila Klein's concern reached a fever pitch over Hasan radicalizing his audience with propaganda from Ansar Allah a/k/a The Houthis, Hezbollah and Hamas. The Kleins were equally concerned with Twitch's refusal to enforce its Community Guidelines against Hasan and his so-called "Waiting Room" – *i.e.*, other Twitch streamers, like Frogan, who parrot Hasan and parasitically leach off his audience by broadcasting immediately before or after his streams.

37. Hasan and his Waiting Room hijacked the necessary and important discussion of the Israeli-Palestinian conflict and the Gaza War. They employed genocidal rhetoric that painted all Israelis as subhuman warranting annihilation. The term "Zionist" lost all meaning and quickly mutated into a thinly-veiled dog whistle for Jews.[38] To combat the tsunami of hateful rhetoric, Ethan and Hila Klein –

[38] The term "Zionist" was used as a slur to paint anyone who supported the existence of Israel or a two-state solution as a Kahanist (Jewish Supremacist) or (continued).

through TEI – created *Content Nuke: Hasan Piker*.

38. *The Nuke* was written, shot and edited from December 2024 through January 2025. On January 27, 2024 (*i.e.*, four days before the Nuke was publicly released on TEI's h3h3Productions YouTube channel), TEI submitted its application to register *The Nuke* with the United States Copyright Office (the "USCO"). On January 28, 2025, the USCO received the deposit copy of the Nuke (the "Deposit Copy"). The registration number for *The Nuke* is PAu 4-256-429.

39. The Deposit Copy varied slightly from the broadcast version of *The Nuke* (the "Broadcast Version"). First, the Deposit Copy did not contain the conclusion and sponsor segment that was contained in the Broadcast Version. Second, to prevent *The Nuke* from being age-restricted by YouTube (which would limit its reach), TEI was required to fully blur out the footage of the Houthis entering the bridge of the *Galaxy Leader* and black out the footage of Hamas releasing hostages from November 2023. Third, minor visual edits were made. Ultimately, all of the Deposit Copy was incorporated into the broadcast version of the Nuke comprised of the Deposit Copy.[39]

The Nuke

Israeli Religious Nationalist. In the most recent Israeli Legislative Election in 2022, the coalition of these parties only received 10.84% of the vote. Wikipedia, "Kahanism" *available at*: https://en.wikipedia.org/wiki/Kahanism; Institute for Middle Eastern Understanding, "Fact Sheet: Meir Kahane & The Extremist Kahanist Movement" (May 17, 2024), *available at*: https://imeu.org/article/fact-sheet-meir-kahane-the-extremist-kahanist-movement; Wikipedia, "National Religious Party," *available at*: https://en.wikipedia.org/wiki/National_Religious_Party; The Israel Democracy Institute, "National Religious Party (Mafdal)," *available at*: https://en.idi.org.il/israeli-elections-and-parties/parties/national-religious-party/; Wikipedia, "2022 Israeli legislative election," *available at*: https://en.wikipedia.org/wiki/2022_Israeli_legislative_election.

[39] TEI is concurrently-filing with this Complaint a Notice of Lodging accompanied by a flash drive containing various video exhibits referenced in the Complaint (the "Flash Drive"). A true and correct copy of the Deposit Copy is located on the Flash Drive as Exhibit D. A true and correct copy of the Broadcast Version is located on the Flash Drive as Exhibit E.

40. *The Nuke* is a tragi-comic documentary critiquing Hasan and Twitch. It contains original footage, highly edited montages, parodic skits and archival materials (a great deal of which are owned by TEI). *The Nuke* can be divided into seven sections: (1) The Prologue; (2) The Twitch Parody Sketch; (3) The Houthi Section; (4) The Hezbollah Section; (5) The Hamas Section; (6) The Twitch Section; and (7) The Conclusion.

a. The Prologue (Ex. E at 0:00:00-0:25:40): The prologue walks the audience through Ethan's thesis of *The Nuke*: that Hasan radicalizes his audience with genocidal and antisemitic terrorist propaganda.

i. While admitting both of himself and Hasan are polarizing figures with controversial takes, Ethan explains he grew concerned with Hasan's rhetoric after hearing him excuse Russian and Chinese genocide and imperialism, namely Hasan's positions on Crimea, Tibet, Taiwan and the Uyghurs.

ii. Once October 7th occurred, Ethan's concerns were exacerbated. He received a torrent of antisemitic comments from Hasan's audience and saw Hasan downplay the sexual violence perpetrated by Hamas on October 7th.

iii. Ethan explains that the primary difference of opinion between him and Hasan (and his audience). While both are aligned on supporting the Palestinian cause – including condemning Israeli Prime Minister Benyamin Netanyahu, Israeli settlements and Israeli settlers, they differ in one key aspect regarding how to solve the conflict: Ethan believes in a two-state solution, while Hasan (and his audience) believe in a one-state solution.

iv. Ethan articulates the concerns Israelis have with a one-state solution: Israel has been at war with its Arab neighbors since the country's inception. As a nation of refugees, the idea of suddenly becoming a minority raises legitimate concerns – particularly for the Mizrahi Jews (*i.e.*, Jews from Arab countries) who were expelled from Arab countries.

v. Ethan then shows archival footage of Hasan: (1)

supporting terrorism and glorifying terrorists; (2) admitting to hiding his "power level" (*i.e.*, extremism) because it is a more palatable way to introduce young people into the "radicalization funnel"; (3) conceding to being a propagandist; and (4) expressing vitriolic hatred of liberals. Ethan further points out that Twitch takes no action to moderate Hasan.

vi. Ethan ends The Prologue by expressing his underlying fear that he played a role in mainstreaming Hasan and that he radicalized Ethan's audience.

b. The Twitch Parody Sketch (Ex. E at 0:25:41-0:30:39): The next section involves Ethan parodying a Twitch advertising executive. In the scene, Ethan mocks how Twitch has embraced Hasan's extremist rhetoric and rebrands terrorism as socially acceptable. After the sketch ends, Ethan shows a media bias report that ranked Hasan as one of the most extreme and unreliable news sources.

c. The Houthis Section (Ex. E at 0:30:40-0:55:33): The Houthi Section focuses on Hasan radicalizing his audience by glorifying and disseminating Houthi propaganda.

i. Ethan beings with an overview of various Houthi atrocities and how they contradict leftist values. Examples include recruiting child soldiers, shelling and blocking aid to civilians, ruining agricultural land with mines, oppressing women and members of the LGBTQ community, torturing and killing women and slavery. Ethan also highlights the Houthi's antisemitism – such as performing Nazi salutes and the slogan on their flag calling for "Death to Israel" and "Curse Upon the Jews."

ii. Ethan critiques Hasan's coverage of the Houthis by using his stream with Nick Polom p/k/a Nmplol ("Nick") as a case study. Hasan exploits Nick's political naiveté by putting on a Houthi propaganda music video and leaving Nick alone who watches in abject horror. Ethan cites Twitch's Community Guidelines – which explicitly prohibit showing terrorist propaganda for any

purpose. Despite this, Twitch refuses to enforce its Community Guidelines against Hasan. Hasan downplays the fact that the Houthi propaganda video is terrorist propaganda to Nick by describing the video as merely a "musical" and the Houthis as "musical people." When Hasan mischaracterizes the hijacking of the ship the *Galaxy Leader* as an effective deterrent against Israel, Ethan debunks Hasan's assertions that the ship was in Houthi waters, destined to Israel or an Israeli ship. Ethan also excoriates Hasan for minimizing the Houthis taking the crew of the *Galaxy Leader* hostage.

iii. Ethan also critiques Hasan's misguided belief that, if Israeli commerce is disrupted, Israelis will leave Israel. Ethan demonstrates 80% of Israelis were born in the country and have nowhere else to go. This is exacerbated by the fact that the majority of Jewish Israelis fled (or are descendants from those who fled) Arab countries. The argument that Jews will "return where they came from" is ahistorical and denies their connection of Jews to the Middle East. Rather, it furthers an antisemitic conspiracy theory that questions the origins of the Jews in an attempt to brand Jewish Israelis as outsiders and colonizers.

iv. Ethan shows another example of Hasan watching and praising a different Houthi propaganda music video. To mock Hasan's laudatory coverage of this video, Ethan juxtaposes the Houthi music video with a highly edited version of the Miami Boys Jewish Choir singing "Yerushalim."

v. Ethan lambasts Hasan's interview of the Houthi terrorist Rashid Al-Haddad a/k/a Tim "Houthi" Chalamet ("Al-Haddad"). Al-Haddad became a viral sensation on TikTok when he shot footage of himself boarding the *Galaxy Leader*. Ethan mocks Hasan's self-described "journalism" through a montage of Hasan acting like a fan girl, asking frivolous questions and blindly accepting Al-Haddad's answers – particularly his absurd claim that he danced with the crew taken hostage and that he successfully convinced the crew to hate Israel.

vi. Ethan exposes Hasan's subsequent attempts to downplay

Al-Haddad's Houthi connections as disingenuous and a form of bigotry. Not only did Hasan believe he was speaking with a Houthi and promoted the interview as being with a Houthi, Al-Haddad's social media posts admitted and reinforced this fact. When confronted with Al-Haddad's social media posts that fail to distinguish between Jews and Zionists, Hasan engages in all forms of apologia to excuse Al-Haddad's genocidal and antisemitic rhetoric. Hasan even grotesquely compares Al-Haddad to Anne Frank – which Ethan mocks as the Twitch advertising executive.

vii. The Houthi section ends with Ethan excoriating Hasan with a montage of him cynically deflecting and evading criticism by exploiting the term "genocide." This hypocrisy is highlighted by footage of Hasan from a few years ago where he was unable to locate Yemen on a map (and even confusing it with Israel).

d. The Hezbollah Section (Ex. E at 0:55:44-1:01:43): The Hezbollah Section focuses on Hasan radicalizing his audience by disseminating and glorifying Hezbollah propaganda.

i. Ethan begins by highlighting some of Hezbollah's atrocities and how they contradict leftist values. Examples include engaging in terrorism resulting in the deaths of thousands of civilians, the assassination of Lebanese Prime Minister Rafik Al-Hariri, hijacking airplanes, firing 15,000 rockets in civilian areas, being a designated terrorist group and its participation in the Syrian genocide to prop up the dictator Bashar Al-Assad.

ii. Next, Ethan critiques Hasan by juxtaposing scenes of him downplaying and excusing Hezbollah's genocidal terrorism and praising Hassan Nasrallah (Hezbollah's former leader) with Nasrallah's numerous antisemitic and genocidal statements against Jews.

iii. Ethan goes on to critique Hasan's lazy and ignorant apologia for Hezbollah and analysis of the conflict, such as branding any criticism of Hezbollah as Islamophobic and Hasan telling Nick that Israel attacked Lebanon

because “they were just there.” Ethan refutes these assertions by demonstrating Hezbollah began firing rockets at Israel the day after October 7th, killed over 100 Israelis and displaced over 200,000. Ethan questions how Hasan’s falsehoods help his position when, in reality, Hasan’s misrepresentations only exacerbate the conflict.

e. The Hamas Section (Ex. E at 1:01:44-1:11:50): The Hamas Section focuses on Hasan radicalizing his audience by disseminating and glorifying Hamas propaganda, coupled with denying the atrocities of October 7th.

i. Ethan begins by highlighting some of Hamas’ atrocities and how they contradict leftist values. Examples include recruiting children, committing hundreds of suicide bombings that target civilians, firing 50,000 rockets into civilian areas, oppression of women, punishing homosexuality by death, stealing aid intended for Gazans for its own military use or exploiting Gazans by selling the aid back to them.

ii. Next, Ethan critiques Hasan’s reaction to a Hamas propaganda video from November 2023 involving the release of hostages. Hasan gushes effusively over Hamas’ treatment of the hostages. He even makes the absurd claim that hostages released in the future will chose to stay in Gaza rather than return to Israel. When a member of Hasan’s audience points out the hostages are traumatized, Hasan claims the hostages are “just chillin.” Ethan correctly points out that these scenes are staged by Hamas, that the hostages are still being held at gunpoint and provided instructions on how to behave, such as “keep waving.”

iii. Ethan goes on to lambast Hasan’s reaction to a Hamas propaganda video depicting Hamas creating homemade sniper rifles. Hasan plays the entire clip without any commentary or criticism. Once complete, Hasan’s explanation for showing the video is a nonsensical word salad of buzzwords that have nothing to do with the contents of the video.

iv. Ethan goes on to address Hasan’s grotesque denial of

sexual violence perpetrated by Hamas on October 7th. He shows a montage of numerous clips of Hasan explicitly denying the sexual violence of October 7th and scoffing at President Biden and Vice-President Harris discussing said violence. Ethan refutes Hasan's denials by showing clips of victim testimony from Sheryl Sandberg's documentary *Screams Before Silence* and displayed the conclusion of a United Nations report that stated:

> Overall, based on the totality of information gathered from multiple and independent sources at the different locations, there are reasonable grounds to believe that conflict-related sexual violence occurred at several locations across the Gaza periphery, including in the form of rape and gang rape, during the 7 October 2023 attacks. Credible circumstantial information which may be indicative of some forms of sexual violence, including genital mutilation, sexualized torture, or cruel, inhuman and degrading treatment, was also gathered.

v. Ethan concludes the section by addressing the heart of the matter. Hasan exacerbates the Israeli-Palestinian conflict by denying the suffering of Israeli victims to hold up Hamas as unimpeachable. As Ethan poignantly states:

> This conflict will never end until people realize that Palestinian liberation and Israeli security are not mutually exclusive. You need both. And it can be done, but not while people like Hasan lie, propagandize and incite hate. It's people like him, ironically, that prolong the conflict indefinitely. There's no space for conversation. There is no space for rational thought. There is no space for nuance. My position on Palestine is like five degrees off from where Hasan is. And to him and his community, I'm the devil. I'm a Nazi. It's delusional thinking. And it's destructive to their own cause.

f. The Twitch Section (Ex. E 1:11:51-1:40:29): The Twitch Section explores the role Twitch plays in enabling Hasan and his Waiting Room to violate Twitch's Community Guidelines.

i. Ethan begins by critiquing Twitch's Chief Executive Officer, Dan Clancy ("Clancy"). He points to Clancy's ineffectiveness as a CEO, namely rolling back his initiative to change revenue splits and the size of sponsor logos on stream – along with laying off significant portions of Twitch staff. Clancy explicitly states he is a fan of Hasan and is aware of his rhetoric. Clancy even sang Hasan "Happy Birthday" and forced Twitch employees to sing along while being filmed. Ethan also discusses the creepiness of Clancy's penchant for e-girls (*i.e.*,

young, female Twitch streamers whose streams are about highlighting their physical assets) by pointing to two examples of Clancy's stories feature on the Twitch app being completely populated by e-girls.

ii. Next, Ethan discusses Frogan by showcasing numerous instances of her moral bankruptcy. Despite Frogan claiming to support the Palestinian cause, she condemned the large streamer, Ludwig Ahgren ("Ludwig"), by telling him to keep his $10,000 donation to Palestine because Ludwig decided not to organize a charity drive for Palestinians (even though he encouraged his viewers to donate).

iii. Ethan also highlights numerous instances of Frogan's cruelty. In one clip, Frogan wishes soldiers to get PTSD. A few days later – after the clip caused tremendous controversy – Frogan watched the clip while giggling and justifying her take. Despite veterans receiving protected status under Twitch's Community Guidelines, Twitch did nothing to sanction Frogan for these statements. In another clip, Frogan conducts a subathon (a marathon to acquire paid subscriptions) where she promises to make a cake recreating September 11th if she reaches a certain goal. Once again, Twitch did nothing. Ethan highlights the tweet that Frogan made on the morning of October 7th, while the massacre was still ongoing, that is referenced above. Ethan juxtaposes this tweet with audio of cell phone conversations of victims of October 7th speaking with their parents during their final moments.

iv. Ethan critiques how Twitch props up Frogan, by refusing to sanction her, giving her awards and featuring her on Twitch's home page. He also mocks Frogan being nominated for a rising star award by her friends twice.

v. Most notably, Ethan lambasts Twitch for allowing Frogan to host a panel at Twitchcon 2024. The panel involved a racial tier list with "Arab" at the top and "Loves Sabra" at the bottom. While the premise of the tier list is who can say the word "Habibi" (an Arabic term of affection), the term "Loves Sabra"

was a dog whistle for Jews and Israelis for several reasons. First, Sabra is a well-known Israeli commercial hummus brand that is on the Boycott, Divestment and Sanctions list. Second, the term "Sabra" means a Jew born in Israel. Third, it falsely asserts Israelis misappropriated Arab culture and identity. As evidenced by a clip from Frogan's podcast, the purpose of disseminating this disinformation is to deny the long historical ties of Jews to the Middle East and the Levant. Ethan further highlights the hypocrisy and bigotry of these false claims by noting Arab culture and cuisine is Israeli culture and cuisine because the majority of Israeli Jews are from Arab countries or direct descendants of Jews from Arab countries. Fourth, Ethan was put in the "Loves Sabra" category with Denims (another member of Hasan's Waiting Room) "joking" that there should be a lower category for Zionist. Fifth, Ethan notes that Ben Shapiro ("Shapiro") is put in the thumbnail for the video with Ethan – despite Shapiro not being put on the list whatsoever. Rather, the only explanation is that both Ethan and Shapiro are Jewish and married to women born in Israel. Sixth, Ethan notes that the title of the video is *How Arab Are These Twitch Streamers?!* – which belies the assertion that the ranking was merely about hummus. Ethan concludes this segment to point out the hypocrisy of the panel claiming to be concerned with minorities, while refusing to acknowledge why their tier list makes a Jewish man uncomfortable. Finally, Ethan marvels that Twitch approved the panel in the first place.

vi. Ethan critiques a Q&A session Clancy conducted on Twitch shortly after the controversy over the racial tier list erupted. Several chatters for the Q&A session asked Clancy to address the antisemitism on Twitch – all of whom were banned from the chat.

vii. Ethan addresses the yearlong ban Twitch imposed to prevent Israeli users from creating new Twitch accounts. The ban was enacted on October 13, 2023 (*i.e.*, six days after October 7th) – which is also the Global Day of

Jihad (a day of mass rage, called for by Hamas leader, Khaled Mashal).[40] Despite numerous instances of Israeli Twitch streamers communicating directly with Twitch about the issue and trying to raise awareness online, Twitch either ignored or obfuscated the issue until there was a massive public outcry.

viii. Ethan goes on to excoriate Twitch for reinstating three well-known antisemites shortly after the ban was discovered: (1) Al-Haddad; (2) Nicolas 'Nico' Kenn De Balinthazy p/k/a Sneako; and (3) Amrou Fudl p/k/a Mryon Gaines from Fresh and Fit. Once again, Twitch reversed course after a public outcry.

ix. Ethan points out how antisemitism and anti-Israel animus appears institutionalized at Twitch. Ethan cites two Twitch employees in leadership positions who made antisemitic and anti-Israel posts online. First is Fadzai Madzingira ("Madzingira") – who was investigated and suspended from her role in the British media regulatory agency, Oxcom. Madzingira was called out in the middle of the United Kingdom's Parliament for her anti-Israel and antisemitic posts shortly after October 7th. After she resigned, Madzingira was hired by Twitch as a Senior Manager in Twitch's Trust & Safety Policy department (*i.e.*, the department responsible for the Community Guidelines). Another example is Bridget Kyerematen – who is Twitch's Senior Manager for Inclusive Marketing – and has a history of making antisemitic and anti-Israel posts, including shortly after October 7th.

[40] Andrew Jeong, Washington Post, "France Bans Pro-Palestinian Protests Amid Call for Hamas 'Day of Rage'" (Oct. 13, 2023) *available at*: https://www.washingtonpost.com/world/2023/10/13/france-palestine-protest-hamas-day-of-rage/; Simon Wiesenthal Ctr., "Hamas Call for Worldwide 'Day of Rage'", (Oct. 2023), *available at*: https://www.wiesenthal.com/about/news/hamas-call-for-worldwide.html; ABC News Live, "Hamas Declares 'Day of Rage'" (Oct. 13, 2023), https://www.youtube.com/watch?v=dOoNLREwxJs; Meredith Deliso, ABC News, "Hamas 'Day of Rage' Protests Break Out in Middle East and Beyond" (Oct. 13, 2023), https://abcnews.go.com/International/hamas-day-rage-protests-break-middle-east/story?id=103955873.

x. Ethan concludes the section by critiquing Twitch's biased and inconsistent enforcement of its Community Guidelines. He uses the ban of Steven Bonnell II p/k/a Destiny ("Destiny") as a case study. Destiny was permanently banned from Twitch for calling the streamer and transactivist Clara Sorrenti p/k/a Keffals "inbred." A montage is shown of Hasan repeatedly referring to Jews and Israelis as "inbred" or laughing at Jews being called "inbred." Hasan received no punishment from Twitch because he is Clancy's favorite streamer. Ethan recaps other examples of Hasan flagrant violations of Twitch's Community Guidelines that resulted in no consequences. Not only did Hasan call Jews and Israelis "inbred" and platformed terrorists and terrorist propaganda, Hasan threatened Senator Tom Cotton by replying to Senator Cotton's tweet with a schematic of the weapon used to assassinate Japanese Prime Minister Shinzo Abi. This is followed by a montage of numerous instances of alt-left streamers on Twitch making death threats without any (or minimal) consequences from Twitch.

g. Conclusion (Ex. E at 1:40:30-1:42:05: Ethan ends *The Nuke* by summarizing the two reasons why he made the video. First, to stop Hasan's infiltration of mainstream media. Second, to hold Twitch accountable for enabling antisemitic and anti-Israel animus on its platform.

H3Snark Promotes Frogan as a Substitute to Watching *The Nuke*

41. Throughout January 2025, Ethan built up public interest in *The Nuke* by frequently discussing it on *The H3 Show*. The audience of Hasan and his Waiting Room – who comprised a large portion of the users on H3Snark – anticipated *The Nuke* with religious fervor to defend their proverbial Grand Mufti from criticism. These fanatics, however, did not want to watch the authorized version *The Nuke* because TEI would reap the benefits from the views and resulting advertising revenue.

42. The H3Snark Mods knew that there was a huge demand to watch *The Nuke* through unauthorized channels and promoted "group viewing sessions" of

The Nuke as follows:

a. On January 30, 2025 (*i.e.*, the day before *The Nuke* was released), Doe No. 3 (*i.e.*, u/jewettornesarah) – as an H3Snark Mod and on behalf of the H3Snark Mods – created a pinned post entitled "MEGATHREAD | Content Nuke – Where to Watch & Discussion" ("First Inducement Post"). As a pinned community post, the First Inducement Post was featured at the very top of the H3Snark page in the "Community highlights" section before any other posts were visible. The H3Snark Mods did this to maximize the visibility of the First Inducement Post. The First Inducement Post featured Frogan as a place "to watch the nuke without showing support for H3" (*i.e.*, TEI) and a link was provided to her stream on Twitch. The First Inducement Post also stated that Frogan "supported" H3Snark "by engaging directly with [the H3Snark Mods] directly." A true and correct PDF printout of the First Inducement Post is attached hereto as Exhibit F.

b. On January 31, 2025 (*i.e.*, the day *The Nuke* was released), the H3Snark Mods created and updated a pinned community post entitled "Ethan Klein's Content Nuke on Hasan Piker | H3 Snark Megathread" (the "Second Inducement Post"). The Second Inducement Post was also a pinned community post that was featured at the very top of the H3Snark page to maximize visibility. The Second Inducement Post featured Frogan as a place "to watch reactions to this video" (*i.e.*, *The Nuke*) and a link was provided to her stream on Twitch. A true and correct PDF printout of the Second Inducement Post is attached hereto as Exhibit G.

c. At some point after January 31, 2025, the H3Snark Mods deleted the First Inducement Post and Second Inducement Post to conceal their contributory infringement of *The Nuke*.

43. The H3Snark Mods were well aware of Frogan's reputation for copyright infringement and lazy reaction videos. As such, the H3Snark Mods knew that it was highly likely Frogan's reaction to *The Nuke* would be an infringing

"group viewing session" of *The Nuke* and not a fair use. The H3Snark Mods coordinated with Frogan to direct H3Snark users to Frogan's "group viewing session" of *The Nuke* noting she was "*Live but not reacting yet*" to the Nuke. Ex G (original emphasis).

The Law of Fair Use and Reaction Videos

44. Fair use is codified in Section 107 of the Copyright Act. The statute sets forth four non-exclusive factors courts consider to evaluate fair use:

> 1. [T]he purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
> 2. [T]he nature of the copyrighted work;
> 3. [T]he amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
> 4. [T]he effect of the use upon the potential market for or value of the copyrighted work

45. The first fair use factor "relates to the problem of substitution" – *i.e.*, whether the new work "supersedes" or "supplant[s]" the original. *Warhol*, 598 U.S. at 527. The "central question" is whether the secondary work "adds something new, with a further purpose or different character." *Id.* at 528. The mere fact that a secondary use has "some further purpose" or "add[s] something new … does ***not*** render such uses fair." *Id.* at 528-529 (emphasis added). Rather, "whether an allegedly infringing use has a further purpose or different character" is "a ***matter of degree***, and the degree of difference ***must*** be weighed against other considerations, like commercialism." *Id.* at 532 (emphasis added).

46. While a "use that has a further purpose or different character is said to be 'transformative[,]' … 'transformativeness' is a matter of degree." *Warhol*, 598 U.S. at 529. Indeed, "an overbroad concept of transformative use, one that includes any further purpose, or any different character, would narrow the copyright owner's exclusive right to create derivative works." *Id.* "To preserve that right, the degree of transformation required to make 'transformative' use of an original must go beyond that required to qualify as a derivative." *Id.*

47. The "first factor also relates to the justification for the use" both in the

"broad sense" and the "narrower sense." *Warhol*, 598 U.S. at 531-532. A use is justified in the "broad sense" if it has a "distinct purpose" that "furthers the goal of copyright, namely, to promote the progress of science and the arts, without diminishing the incentive to create." *Id.* at 531. A use is justified in the "narrower sense" when it "is reasonably necessary to achieve the user's new purpose." *Id.* Such justification is "particularly relevant to assessing fair use" where "wide dissemination of a secondary work would otherwise run the risk of substitution for the original or licensed derivatives." *Id.* Again, "the question of justification is one of degree." *Id.*

48. A "critical book review" illustrates how a secondary use must be justified both in the broad and narrow sense. *Warhol*, 598 U.S. at 528 fn. 4. In the broad sense, the use of the original serves "a different purpose than the book" (*i.e.*, criticism and commentary). *Id.* In the narrow sense, "each quoted passage within the review likely serves a different purpose (an object of criticism) than it does in the book." *Id.* Critically, this "may not always be so" and "a court must consider each use within the whole to determine whether the copying is fair." *Id.* Consequently, "[e]ven book reviews are not entitled to a presumption of fairness." *Id.*, 598 U.S. at 532 fn. 7.

49. There are several indicia of when a use for criticism or commentary is not sufficiently transformative to justify a secondary use.

a. When the "commentary has no critical bearing on the substance or style of the original composition, the claim to fairness in borrowing from another's work diminishes accordingly (if it does not vanish), and other factors, like the extent of its commerciality, loom larger." *Warhol*, 598 U.S. at 530-531. Indeed, "a loose topical connection" with the original work is equally problematic. *McGucken*, 42 F.4th at 1159.

b. When "a defendant copies more than is necessary to facilitate 'comment or criticism.'" *Penguin Random House LLC v. Colting*, 270 F.Supp.3d

736, 751 (S.D.N.Y. 2017). "The law is clear that, to be considered transformative criticism, the aspects of a work that reproduce another's protected expression must be in service of commentary on that work. It is not enough for part of a work to have a transformative purpose." *Id.*

c. When the "use" of the copyrighted work "is not consistently transformative." *Elvis Presley*, 349 F.3d at 628. For example when "clips are played without much interruption, if any" or "used in excess of [the] benign purpose." *Id.* at 629.

d. The use of "voice overs," "headlines or captions" or "wholesale copying sprinkled with written commentary," fails to sufficiently transform a copyrighted work under the first fair use factor. *Monge*, 88 F.3d at 1174, 1176; *Elvis Presley*, 349 F.3d at 628-629. Additionally, "[w]hen a copyrighted work is used simply to illustrate what that work already depicts, the infringer adds no further purpose or different character" and "copyright law treats the infringer as freeriding on the inherent value of the original work." *McGucken*, 42 F.4th at 1158.

e. The first fair use factor "does not" favor "any user who wants to reach different buyers, in different markets, consuming different products." *Warhol*, 598 U.S. at 548 fn. 22.

50. As mentioned, the degree to which a secondary use has a different purpose or character, "must be weighed against other considerations, like commercialism." *Warhol*, 598 U.S. at 525. "The undisputed commercial character of [the defendant's] use, though not dispositive, tends to weigh against a finding of fair use." *Id*. at 537.

51. Commercialism examines "the degree to which the new user exploits the copyright for commercial gain—as opposed to incidental use as part of a commercial enterprise." *Elvis Presley*, 349 F.3d at 627. Courts consider whether the defendant was "motivated by profits" and "profited from the publication." *Monge*, 688 F.3d at 1176. Further, if the defendant "is not advertising a scholarly critique or

historical analysis, but instead seeks to profit at least in part from the inherent entertainment value" of the original, the use is commercial. *Elvis Presley*, 349 F.3d at 628. Finally, commercialism exists "when a secondary user makes unauthorized use of copyrighted material to capture significant revenues as a direct consequence of copying the original work." *Blanch v. Koons*, 467 F.3d 244, 253 (2d Cir. 2006).

52. In *Hosseinzadeh*, the Court found the first fair use factor favored fair use because the Klein video was "quintessential criticism and comment … on the Hoss video" – namely consistent "mockery" of Matt Hoss' "performance … dialog and plotlines." 276 F.Supp.3d at 40, 45-46. The Klein video was consistently transformative by "intersperse[ing] relatively short segments of the Hoss video with long segments of the Kleins' commentary." *Id.* at 40.

53. The second fair use factor (*i.e.*, "the nature of the copyrighted work") "typically has not been terribly significant in the overall fair use balancing." *McGucken*, 42 F.4th at 1161. This factor examines "the extent to which [the original work] is creative and whether it is unpublished." *Id.* Even when a work "document[s] a real event," the work can still be "creative because [it is] the product of many technical and artistic decisions." *Id.* Whether a work is published is defined by whether the author exhausted the "right to control the first public appearance" of the work. *Monge*, 688 F.3d at 1178. The mere fact a work is published "does not weigh in favor of fair use." *McGucken*, 42 F.4th at 1162.

54. In *Hosseinzadeh*, the Court found the second fair use factor "weigh[ed] against a finding of fair use" because the Hoss video was "a creative work" – despite the work being published. 276 F.Supp.3d at 46.

55. The third fair use factor examines "the quantitative amount and qualitative value of the original work used in relation to the justification for that use." *McGucken*, 42 F.4th at 1162. Consequently, the third fair use "factor circles back to the first factor because the extent of permissible copying varies with the purpose and character of the use." *Id.*

56. When "the amount used is substantial with respect to the infringing work, it is evidence of the value of the copyrighted work." *Elvis Presley*, 349 F.3d at 630. Indeed, "[c]opying an entire work militates against a finding of fair use." *VHT, Inc. v. Zillow Group, Inc.*, 918 F.3d 723, 744 (9th Cir. 2019). If, however, "the new user only copies as much as necessary for his or her intended use, this factor will not weigh against the new user." *Elvis Presley*, 349 F.3d at 630.

57. In *Hosseinzadeh*, the Court found that the third fair use factor was "neutral" because, while the Klein video copied "a great deal" of the Hoss video, "the 'extent' and 'quality and importance' of the video clips used by [the Kleins] were … plainly necessary to the commentary and critique." 276 F.Supp.3d at 46.

58. The fourth fair use factor is the "undoubtedly the single most important element of fair use." *Harper & Row Publishers, Inc. v. Nation Enterprises*, 471 U.S. 536, 566 (1985). "While the first fair use factor considers whether and to what extent an original work and secondary use have substitutable purposes, the fourth factor focuses on actual or potential market substitution." *Warhol*, 598 U.S. at 536 fn. 12.

59. The fourth fair use factor "encompasses both (1) the extent of market harm caused by the particular actions of the alleged infringer, and (2) whether unrestricted and widespread conduct of the sort engaged in by the defendant would result in a substantially adverse impact on the potential market for the original and the market for derivative works." *McGucken*, 42 F.4th at 1163. Even when there is "little direct evidence of actual market harm" caused by the secondary use, "to negate fair use," the plaintiff "need only show that if the challenged use should become widespread, it would adversely affect the ***potential*** market for the copyrighted work." *Id.* (original emphasis).

60. The fourth fair use factor also "must take into account the public benefits the copying will likely produce." *Google LLC v. Oracle America, Inc.*, 593 U.S. 1, 35 (2021). In other words, does the use "serve copyright's goal of enriching

public knowledge." *Warhol*, 598 U.S. at 531 (quoting *Authors Guild v. Google, Inc.*, 804 F.3d 202, 214 (2d Cir. 2015) (Level, J.). When the original work is associated with "dangerous misinformation," it does not serve the public benefit and results in "actual and reputational harm" to the market for the original work – even when the "primary markets … do not meaningfully overlap." *National Academy of Television Arts and Sciences, Inc. v. Multimedia System Design, Inc.*, 551 F.Supp.3d 408 (S.D.N.Y. 2021).

61. In *Hosseinzadeh*, the Court found the fourth fair use factor "weighs in favor of a determination of fair use." 276 F.Supp.3d at 47. The Klein video did not "usurp[] demand for the copyrighted work, thereby resulting in a loss for the infringee or unjust enrichment for the infringer." *Id.* at 46. To the contrary, "the Klein video [did] not serve as a market substitute for the Hoss video" because the Klein video "transform[ed] the Hoss video from a skit into fodder for caustic, moment-by-moment commentary and mockery." *Id.* at 47. Consequently, "the Klein video [did] not offer a substitute for the original." *Id.*

Frogan's "Group Viewing Session" Failed to Make a Fair Use of *The Nuke*

62. It is readily apparent that the primary and overriding purpose of Frogan's use of *The Nuke* was to commercially exploit a "group viewing session" of *The Nuke* and have it serve as a substitute for the original.[41] This is evidenced by:

a. Frogan's statements demonstrating that she intended for her "group viewing session" to serve as a substitute for *The Nuke*, such as:

i. On January 30, 2025 (*i.e.*, the day before *The Nuke* was released), Frogan made a statement on stream demonstrating her "group viewing session" – along with the group viewing sessions of her friends – would serve as a substitute for the original:[42]

[41] A true and correct copy of Frogan's January 31, 2025 broadcast is located on the Flash Drive as Exhibit H.

[42] A true and correct copy of a clip from Frogan's January 30, 2025 stream is located on the Flash Drive as Exhibit I.

> ***He [i.e., Ethan] wants to maximize numbers [i.e., views].*** Here's the thing though. ***No matter what, there are going to be people [i.e., other creators] that they [i.e., the audience] would rather watch it with*** – no matter what time he goes live. Denims goes live at like 7:00 in the morning. Sean goes live early as fuck. MikeFromPA also goes on early as fuck. I go live in the afternoon, but lately I've been going live a little bit earlier.

See Ex. I.

ii. Shortly before watching *The Nuke*, Frogan made the following statements acknowledging: (1) that her "group viewing session" of *The Nuke* was a substitute for watching the original; and (2) H3Snark was funneling audience members to Frogan's "group viewing session" of *The Nuke*, with statements such as:

1. "We have a bingo card. Uh, the Snark Reddit made it. Shout out to them." Ex. H at 19:53;

2. "Thank you guys so much! I do appreciate everyone's support. And thank you for ***watching*** it [*The Nuke*] with me." Ex. H at 34:04;

3. "[Reading chatter] First time viewer. ***Time to watch the new nuke ethically***. [Frogan's response] Hell yeah!" Ex. H at 38:54;

4. "[Reading chatter] If found my way from Reddit! [Frogan's response] Hi guys! Welcome Reddit people! Reddit people! Reddit people!" Ex. H at 52:16;

5. "[Reading chatter] I came from the H3Snark reddit. Ethan is so pathetic, while Hasan is unbothered and having a great time. [Frogan's response] Exactly!" Ex. H at 54:09;

6. "[Reading chatter] We're going to watch live. Right? [Frogan's response]. ***We're going to watch it live. Yes!***" Ex. H at 1:09:38.

b. Frogan begins her "group viewing session" of *The Nuke* one minute after *The Nuke* was released to the public. Ex. H at 1:10:34. The timing of

Frogan's "group viewing session" of *The Nuke* demonstrates that she did not prescreen it to formulate her opinions prior to broadcast. Rather, Frogan timed her "group viewing session" to occur immediately after *The Nuke* was released to capitalize on the great public interest in *The Nuke* and siphon as many viewers as possible away from the original to herself. In other words, her priority was to personally and financially benefit from providing a substitute for the original and any commentary and criticism was a mere afterthought.

c. On forty separate occasions, Frogan's "group viewing session" comprises of watching *The Nuke* (primarily at 1.5 to 1.75 speed) for thirty seconds or more with no commentary whatsoever (or, at most, including an unintelligible word or phrase). In most instances, Frogan is not even paying attention to *The Nuke.* Rather, her head is buried in her phone texting someone else. In the aggregate, these excerpts comprise 72 minutes (or approximately 70%) of *The Nuke.* The poverty of Frogan's commentary – coupled by showing long, unadulterated portions of *The Nuke* – further demonstrates Frogan intended her "group viewing session" to serve as a substitute for the original.

	Timestamps of Excerpt from Frogan's Group Viewing Session	**Total Duration of Excerpt from Frogan's Group Viewing Session**	**Speed *The Nuke* is Played**	**Duration of *The Nuke* Shown (Accounting for Speed)**
1	1:12:43-1:13:31	48 Seconds	Normal	48 Seconds
2	1:14:39-1:15:10	31 Seconds	Normal	31 Seconds
3	1:15:26-1:16:25	59 Seconds	Normal	58 Seconds
4	1:16:34-1:17:21	47 Seconds	Normal	47 Seconds
5	1:18:39-1:19:19	40 Seconds	Normal	40 Seconds
6	1:19:54-1:20:53	59 Seconds	Normal	59 Seconds
7	1:24:10-1:24:44	34 Seconds	1.75	59.5 Seconds
8	1:25:47-1:26:45	58 Seconds	1.75 Speed	101.5 Seconds
9	1:26:49-1:27:26	37 Seconds	1.75 Speed	64.75 Seconds

	Timestamps of Excerpt from Frogan's Group Viewing Session	Total Duration of Excerpt from Frogan's Group Viewing Session	Speed *The Nuke* is Played	Duration of *The Nuke* Shown (Accounting for Speed)
10	1:27:29-1:28:20	51 Seconds	1.75 Speed	89.25 Seconds
11	1:28:40-1:29:10	30 Seconds	1.75 Speed	52.5 Seconds
12	1:31:05-1:32:58	113 Seconds	1.75 Speed	197.75 Seconds
13	1:35:38-1:36:28	50 Seconds	1.75 Speed	87.5 Seconds
14	1:38:04-1:39:27	83 Seconds	1.75 Speed	145.25 Seconds
15	1:41:18-1:41:55	37 Seconds	1.75 Speed	64.75 Seconds
16	1:48:21-1:49:01	40 Seconds	1.5 Speed	60 Seconds
17	1:52:27-1:53:06	39 Seconds	1.5 Speed	58.5 Seconds
18	1:55:37-1:57:32	115 Seconds	1.5 Speed	172.5 Seconds
19	1:57:39-1:59:18	99 Seconds	1.5 Speed	148.5 Seconds
20	2:00:49-2:02:07	78 Seconds	1.5 Speed	117 Seconds
21	2:04:19-2:05:00	41 Seconds	1.5 Speed	61.5 Seconds
22	2:05:55-2:06:38	43 Seconds	1.5 Speed	64.5 Seconds
23	2:06:57-2:07:56	59 Seconds	1.5 Speed	88.5 Seconds
24	2:09:38-2:10:17	39 Seconds	1.5 Speed	58.5 Seconds
25	2:10:39-2:12:30	111 Seconds	1.5 Speed	166.5 Seconds
26	2:13:23-2:14:59	99 Seconds	1.5 Speed	148.5 Seconds
27	2:20:51-2:22:35	104 Seconds	1.75 Speed	182 Seconds
28	2:22:46-2:24:13	87 Seconds	1.75 Speed	152.25 Seconds
29	2:27:25-2:28:11	46 Seconds	1.75 Speed	80.5 Seconds
30	2:32:48-2:34:00	72 Seconds	1.75 Speed	108 Seconds
31	2:34:36-2:35:50	74 Seconds	1.75 Speed	129.5 Seconds
32	2:36:18-2:37:35	77 Seconds	1.75 Speed	134.75 Seconds
33	2:37:39-2:39:10	91 Seconds	1.5 Speed	136.5 Seconds
34	2:47:20-2:48:04	44 Seconds	1.5 Speed	66 Seconds

	Timestamps of Excerpt from Frogan's Group Viewing Session	Total Duration of Excerpt from Frogan's Group Viewing Session	Speed *The Nuke* is Played	Duration of *The Nuke* Shown (Accounting for Speed)
35	2:54:43-2:55:30	47 Seconds	1.5 Speed	70.5 Seconds
36	3:16:28-3:17:23	55 Seconds	1.5 Speed	82.5 Seconds
37	3:22:08-3:22:48	40 Seconds	1.5 Speed	60 Seconds
38	3:23:56-3:25:01	65 Seconds	1.5 Speed	97.5 Seconds
39	3:25:38-3:26:34	56 Seconds	1.5 Speed	84 Seconds
40	3:27:40-3:28:24	44 Seconds	1.5 Speed	66 Seconds

d. In a completely separate instance from those listed above, Frogan provides an "empty chair reaction" – *i.e.*, letting *The Nuke* play while Frogan is completely off-screen. At a certain point, Frogan asks her audience: "Can I use the bathroom please? ***I'll leave it [i.e., The Nuke] playing***." Ex. H at 2:15:00-2:15:10. For one minute and fifty-one seconds, Frogan lets *The Nuke* play at 1.5 speed (*i.e.*, a total of two minutes and forty-six seconds of original) while she is off-screen relieving herself. *Id.* at 2:15:11-2:17:02. When she returns, Frogan is practically silent for an additional minute and three seconds (*i.e.*, at total of one minute and thirty-four seconds of *The Nuke*). *Id.* at 2:17:03-2:18:06.

e. Even when Frogan does pause *The Nuke*, those moments frequently comprise of painfully pregnant pauses as Frogan struggles to find something to say. Many of these excruciating moments of silence (or primarily silence) last ten seconds or longer.[43] The consistent "dead air" during Frogan's "group viewing session" further emphasizes that commenting on and critiquing *The*

[43] *See e.g.*, Ex. H at 1:29:11-23, 1:29:28-59, 1:33:09-1:33:23, 1:37:32-42 1:40:41-1:41:00, 1:45:04-18, 1:45:52-1:46:16, 1:47:05-25, 1:47:45-1:48:20, 1:49:20-32, 1:50:09-22, 1:51:03-49, 1:59:35-50, 2:00:32-48, 2:20:17-39, 2:32:33-47, 2:34:08-2:34:35, 2:39:30-40, 2:42:29-59, 2:47:09-19, 2:50:20-31, 2:55:31-52, 3:02:48-3:03:06, 3:04:30-50, 3:05:00-11, 3:05:26-47, 3:07:00-10, 3:08:41-53, 3:15:34-48, 3:20:13-30, 3:22:49-3:23:09

Nuke was an afterthought to the primary purpose of Frogan's "group viewing session" – *i.e.*, to financially capitalize on the public interest in *The Nuke* by siphoning views away from the original and to herself. If the opposite were true, Frogan would have taken her time to formulate her thoughts and select the portions of *The Nuke* she intended to critique.

f. Frogan also uses her "group viewing session" to infringe on other copyrighted works. For example, the intro of Frogan's "group viewing session" consists of playing numerous songs in their entirety by the artist Bad Bunny, while a countdown clock is displayed for when her stream will begin. Ex. H at 0:00:00-0:13:19. On another occasion she plays an uninterrupted twenty-nine second excerpt of *Arab Money (Remix)* by the artist Busta Rhymes without any commentary or criticism. *Id.* at 1:50:23-52.

g. Frogan fails to address the vast majority of points raised in *The Nuke*, which further emphasizes that Frogan's primary purpose was to host a "group viewing session" of *The Nuke* and that any criticism was an afterthought. The points from *The Nuke* that Frogan fails to address are detailed below:

i. Frogan fails to address the following points raised in the Prologue of *The Nuke*: (1) Hasan's take on the Uyghurs in China; (2) the primary political difference between Ethan and Hasan on the Israeli/Palestinian conflict; (3) Ethan's support of the Palestinian cause; (3) the underlying concern of the Mizrahi Jews (and Israelis in general) with the one-state solution; (4) Hasan's support of terrorism; (5) Ethan's commentary on Hasan and his friends discussing how they radicalize their audience through the "radicalization funnel"; (6) Hasan conceding he is a propogandist; and (7) Hasan's hatred of liberals.

ii. Frogan fails to address the following points raised in the Twitch Parody Sketch of *The Nuke*: (1) Twitch embracing extremist rhetoric; (2) Twitch rebranding terrorism; and (3) the media bias report demonstrating Hasan is not a reliable source of information.

iii. Frogan fails to address nearly every point raised in the Houthis Section of *The Nuke*, namely: (1) Hasan glorifying and disseminating Houthi propaganda; (2) the Houthis' atrocities and how they contradict leftist values; (3) the critiques of Hasan indoctrinating Nick (*e.g.*, the Houthi music video, calling the video a "musical," calling the Houthis "musical people," debunking Hasan's assertions on the hijacking of the *Galaxy Leader*, the critiques of Hasan's belief that the Jews will just leave Israel if commerce is disrupted and that the majority of Israelis are Jews from Arab countries); (4) the entire segment concerning Al-Haddad; (5) that Hasan deflects criticism by pulling the genocide card; and (6) Hasan being unable to locate Yemen on the map.

iv. Frogan fails to address a single substantive point raised in the Hezbollah Section of *The Nuke*, notably: (1) Hasan glorifying and disseminating Hezbollah propaganda; (2) Hezbollah's atrocities and how they contradict leftist values; (3) Hasan praising Nasrallah and Nasrallah's antisemitic statements; and (4) Hasan's apologia of Hezbollah.

v. Frogan also fails to address a single substantive point raised in the Hamas Section of *The Nuke*, notably: (1) Hasan disseminating and glorifying Hamas propaganda; (2) Hamas' atrocities and how they contradict leftist values; (3) the critique of Hasan's reaction to the hostage release video, the sniper rifle video and Hasan's analysis of the same; (4) the critique of Hasan's denial of sexual violence on October 7th; and (4) the critique that Hasan denies the suffering of Israeli victims to make Hamas unimpeachable.

h. Frogan's poverty of commentary on *The Nuke* is so blatantly obvious that her chat consistently lambasts her lack of commentary. Notable examples are provided below.

i. On at least three occasions, Frogan reads chats calling her out for her failure to address the points raised in *The Nuke*, such as:

1. "***Don't you have anything to say?***" Ex. H at

2:24:50-2:25:31.

2. "***Could you make at least one good point?***" Ex. H at 2:26:34-46.

3. "***How anyone listens or watches you is insane?!***" Ex. H at 3:08:00-15.

ii. Frogan's response to these critiques effectively concedes she is incapable of providing substantive commentary by stating:

1. "***Like what commentary do you want me to add? By like, oh, this guys a fucking idiot, he's mentally ill and he's having a mental breakdown and uploaded it to fucking YouTube***" Ex. H at 2:25:16-31.

2. "***What do you want me to make a point on?***" Ex. H at 2:26:34-46.

3. Calling people a "***Bitch***" (Frogan's personal favorite). Ex. H at 3:08:00-15.

iii. On at least three occasions, Frogan reads chats calling her out for being a hypocrite, such as:

1. Frogan dragging the crew into the dispute (Ex. H at 3:15:49-3:16:00), despite Frogan previously stating that the crew should be left alone (*id.* at 2:19:17-47, 2:20:40-50).

2. Frogan is not a pacifist (Ex. H at 3:31:26-3:34:05), despite claiming to be a pacifist (*id.* at 3:30:47-3:31:12).

3. Frogan not being aware of the context of a clip (Ex. H at 1:23:20-26), despite accusing Ethan of using clips out-of-context (*id.* at 1:22:09-29).

iv. Finally, on at least two occasions, Frogan reads chats calling her out for engaging in "damage control" and "running defense." Ex. H at 3:14:11-17, 3:28:25-27.

i. When Frogan does share her thoughts during her "group

viewing session," most of her statements that have no critical bearing (or minimal critical bearing) on the style or substance of *The Nuke.* Below are some examples:

i. One of the most frequent utterances by Frogan is expressing excitement over the appearance (or non-appearance) of her friends in *The Nuke. See e.g.*, Ex. H at 1:39:31, 1:39:47-55, 1:46:56-1:47:04, 2:10:18-19, 2:19:03-08, 3:02:13-35, 3:03:18-20, 3:03:26-27, 3:05:48-3:06:35, 3:07:11-49, 3:29:57-3:30:37. In these specific instances, Frogan does not address how her friends are portrayed in *The Nuke*.

ii. On numerous occasions, Frogan makes utterances that are completely incoherent. *See e.g.*, Ex. H at 1:25:44-46, 1:36:31-52, 1:37:26-31, 1:53:19-22, 2:25:56-69, 2:27:15-24, 3:19:34-3:29:09, 3:34:45-50.

iii. On other occasions, Frogan will discuss completely unrelated topics, such as: (1) the purported harassment of her friend (Ex. H at 1:35:10-37); (2) an emergency notification she received (*id.* at 2:03:41-54); (3) thanking another streamer for raiding (*i.e.*, directing viewers to) Frogan's stream (*id.* at 2:06:39-56, 2:07:40); (4) discussing a dispute between Ethan and Daniel Keem p/k/a Keemstar (*id.* at 2:34:01-07, 2:34:23-24); (5) arguing with her chat on completely unrelated points (*id.* at 2:12:31-36, 3:21:38-45, 3:22:05:07); and (6) discussing members of the crew for the *H3 Podcast* (*id.* at 2:18:07-29, 2:19:17-47, 2:20:00-16, 2:20:40-50, 3:15:49-3:16:00).

iv. In other instances, Frogan merely narrates what is shown in *The Nuke*. *See e.g.*, Ex. H at 1:12:16-24, 1:36:29-30, 2:02:22-32, 2:42:06-11, 2:42:06-11, 3:10:40-41.

v. Frequently, Frogan engages in superficial *ad hominem* attacks on Ethan without any further discussion, such as calling him stupid, crashing out, having a mental breakdown and other personal attacks. *See e.g.*, Ex. H at 1:50:51-1:11:00, 1:52:25-26, 1:53:50-55, 1:59:51-2:00:04, 2:02:08-21, 2:05:01-54, 2:13:10-22, 3:12:57-3:13:29, 3:35:18-3:37:07.

vi. Frogan complains about the length of *The Nuke* with little explication. *See e.g.*, Ex. H at 1:20:54-1:21:06, 1:37:59-1:38:03, 1:40:12-17, 1:54:13-17, 2:00:05-11, 2:07:30.

vii. Frogan plays the bingo game created by H3Snark. *See e.g.*, Ex. H at 19:53, 1:11:38-42, 1:11:57, 1:14:18; 1:14:34, 1:54:25-28, 1:54-44-1:55:36, 1:57:33-38, 2:12:55-2:13:01.

viii. Other times, Frogan makes brief and surface level insults and complaints about *The Nuke*, such as: (1) claiming she is disgusted watching *The Nuke* (Ex. H at 1:12:35-42); (2) claiming *The Nuke* is just a clip compilation with voiceovers (*id.* 1:21:15-18); (3) complaining how Hasan's dog, Kaya, is portrayed (*id.*, 1:48:06-20, 1:53:07-12); (4) calling *The Nuke* a "content sparkler" (*id.*, at 2:03:23-31, 2:03:55-2:04:18); (5) complaining about *The Nuke's* use of the Miami Boys Choir (*id.*, at 2:08:16-25); and (6) brief insults of the sound effects, editing and graphics used in *The Nuke* (*id.*, at 1:22:09-12, 1:27:27-28, 2:24:14-16, 2:30:27-35).

j. In other instances, Frogan makes blithe and unsupported false assertions about *The Nuke* and Ethan. Frogan's inability or unwillingness to substantiate her comments demonstrates that – if Frogan's primary purpose was to critique *The Nuke* – she would have taken the time to substantiate her assertions. The lack of substantiation further emphasizes that Frogan's primary purpose was – not to critique *The Nuke* – but to provide a substitute for the original. Below are some examples of Frogan's unsubstantiated false assertions:

i. That Ethan should not provide political analysis. Ex. H at 1:29:20-31, 1:22:59-1:23:03. The irony of this comment is that Frogan proves that she is incompetent at providing political analysis herself. For example, when *The Nuke* discusses Hasan's tweet to Senator Cotton of the schematics of the gun used to assassinate Shinzo Abi, Frogan initially confuses Senator Cotton with Senator Chuck Schumer of New York (who is Jewish) and only realizes her mistake when

her chat points out that "AR" (*i.e.*, the abbreviation for Arkansas) is in Senator Cotton's username. *Id.* at 3:29:19-56.

ii. Ethan doesn't care about Muslims. Ex. H at 1:19:44-53.

iii. Falsely claiming Arabs have not killed Israelis; rather, only Israelis have killed Arabs (Palestinians have killed 1,706 Israelis just since Oct 7, 2023).[44] Ex. H at 1:28:21-27.

iv. Ethan is not a democrat. Ex. H at 1:15:11-25.

v. Hila called for killing "baby militants." Ex. H at 1:26:46-48.

vi. Ethan is dishonest. Ex. H at 2:35:51-2:36:17.

vii. That the clips used in *The Nuke* lack context – despite failing to provide or explain the omitted context. Ex. H at 1:22:12-16.

viii. That the clips used in *The Nuke* were pulled from Destiny's subreddit. Ex. H at 1:22:17-29, 1:23:15-19, 2:03:32-37, 2:22:36-45, 3:31:13-16. Not only does Frogan fail to substantiate this assertion, she does not explain how this alters the meaning or content of the clips used in *The Nuke.*

k. In the rare instances where Frogan does engage with the content of *The Nuke*, her comments primarily concern her favorite topic: herself. Most of these observations have little to no critical bearing on the style or substance of *The Nuke.* The remainder involve making repetitive comments to defend herself – demonstrating Frogan could have used far less of *The Nuke* to make her critiques and defend herself. Examples include.

i. Frogan expressing excitement that she was included in *The Nuke.* Ex. H at 1:32:59-1:33:08, 1:40:29-32.

ii. Indulging in her fantasy that Ethan is obsessed with her

[44] Royal United Services Institute, *Israel and Gaza: A Ceasefire, Not Peace*, (≈Feb.–Mar. 2025) *available at*: https://www.rusi.org/resource/israel-and-gaza-a-ceasefire-not-peace.html.

(when the opposite is clearly the case). Ex. H at 1:45:00-03, 1:45:19-51, 1:46:32-45, 1:49:15-19.

iii. Repeatedly regurgitating her bitterness at *The Nuke's* joke that she is paid by Qatar. Ex. H at 1:49:42-1:50:08, 1:51:57-1:52:00, 2:02:30-2:03:23, 2:28:17-27.

iv. Expressing bewilderment at what was wrong with her comments and posts attacking Ethan. Ex. H at 1:33:24-30, 1:33:54-58, 1:34:06-10.

v. Gloating over her rising star award. Ex. H at 1:45:52-1:46:16.

vi. Thanking Ethan for using a recent picture of her. Ex. H at 1:46:17-27.

vii. Taking issue with being described as Hasan's "head mod" despite *The Nuke* never making that claim. *Compare* Ex. H at 1:24:10-44 *with Id.* at 1:24:45-52, 1:46:52-56.

viii. During the segment of *The Nuke* critiquing Frogan for her comments towards Ludwig, Frogan repeats the same explanation and apology throughout the segment. Ex. H at 2:45:17-2:49:27.

ix. During the segment of *The Nuke* critiquing Frogan for her comment that she wishes veterans get PTSD, Frogan: (1) repeats her assertion that the clip was taken out of context (but when the context is show – *i.e.*, that her comment does not apply to veterans who confess their sins – it does not ameliorate the criticism); (2) repeatedly stating she is embarrassed by what she said, despite continuing to laugh over her statements about veterans; and (3) falsely stating she was banned for thirty days due to her statements – when the actual reason for her ban was the racial tier list she hosted at TwitchCon.[45] Ex. H at 2:49:27-2:52:35.

[45] We know for certain that the ban was for the TwitchCon panel and not Frogan's statements about veterans because all the panelists received the same thirty day ban on the same day. Rich Stanton, PC Gamer "Under pressure from pro-Israel group, Twitch bans several Arab streamers over a month-old TwitchCon panel" (October, (continued).

x. During the segment of *The Nuke* critiquing Frogan's X post on October 7th, Frogan repeats her paltry and unpersuasive attempt to excuse her post by focusing solely on the time it was made (*i.e.* the morning of October 7th on the east coast – which was over ten hours after the attacks began).[46] Ex. H at 2:52:52-2:55:30. Frogan also strategically omits that she liked several posts on X praising Hamas on October 7th. *See e.g.*, ¶ 19(b), *supra*.

xi. During the segment of *The Nuke* critiquing Frogan's panel at TwitchCon 2024 (Ex. H at 3:00:33-3:17:23), Frogan makes such a transparent attempt at damage control that her chat calls her out for it. *Id.* at 3:14:11-17. Frogan's damage control consists of:

1. Making brief statements that are minimally related or completely unrelated to *The Nuke* (Ex. H at 3:00:33-3:31:48);

2. Repeatedly denying she knew that the word "Sabra" means a Jew born in Israel – despite claiming to be an expert in the Middle East (Ex. H at 3:01:49-58, 3:09:19-22, 3:14:45-3:15:02);

3. Providing no substantive response to being called antisemitic (Ex. H at 3:02:36-3:03:17, 3:04:03-3:05:15);

4. Shifting the focus from the discussion on Jews from Arab countries to her family's expulsion during the 1948 War (Ex. H at 3:03:28-3:04:03);

5. Repeatedly attempting (albeit unsuccessfully) to minimize Denims' comment that Ethan should be put into a new category called "Zionist" (Ex. H. at 3:10:40-41, 3:10:59-3:11:19, 3:15:15-16, 3:16:26-27) and that

22, 2025), *available at*: https://www.pcgamer.com/gaming-industry/under-pressure-from-pro-israel-group-twitch-bans-several-arab-streamers-over-a-month-old-twitchcon-panel/ If Frogan's statements about veterans constituted as separate infraction, she would have received additional sanctions from those received by her fellow panelists.

[46] Taija Perry Cook, Snopes, "Timeline: The Oct. 7 Hamas Attack and Israel's Retaliatory War on Gaza" (Nov. 30, 2023) *available at*: https://www.snopes.com/articles/465623/oct-7-hamas-attack-and-israeli-retaliation/

Ethan is a Zionist because of his takes on Palestine (*id.* at 3:11:26-30);

6. Making the bizarre claim that she has no role is creating thumbnail or uploading the video of the racial tier list from TwitchCon to her podcast channel (Ex. H. at 3:12:15-22); and

7. Claiming that it is easy to "debunk blatant lies" – yet failing to debunk anything material or substantive (Ex. H at 3:14:18-21).

xii. During the segment of *The Nuke* on Twitch banning the creation of new accounts in Israel and Palestine (Ex. H at 3:16:28-3:21:29), Frogan repeats the same critique that the ban included Palestine. *Id.* at 3:17:24-29, 3:17:35-39, 3:18:23-37, 3:19:24-34, 3:20:10-12, 3:20:34-40, 3:21:26-29.

l. To be certain, there are brief and fleeting moments when Frogan makes a highly transformative use of *The Nuke*. Where *The Nuke* seeks to expose how Hasan radicalizes people online to be antisemitic and anti-Israeli, Frogan attempts to use *The Nuke* for the exact opposite purpose: to radicalize her audience to be more antisemitic and anti-Israeli. The transformative nature of these moments are undermined (if not erased) by showing far more of *The Nuke* than is necessary to achieve this purpose. Examples include:

i. On two occasions, *The Nuke* discusses Mizrahi Jews living in Israel. Ex. H at 1:28:55-1:32:07, 3:03:26-47. When *The Nuke* discusses that the number of Mizrahi Jews expelled from Arab countries exceeded the number of Palestinians expelled during the Naqba, Frogan makes the facially frivolous assertion that this is a form of "erasing the Naqba." *Id.* at 1:29:24-27. Frogan does not explain how recognizing the tragedy that occurred to Mizrahi Jews erases the tragedy of the Naqba. Rather, Frogan provides an anecdote about how her paternal grandparents were told to leave and come back in four months. *Id.* at 1:30:26-1:31:04.

ii. On three occasions, Frogan accuses Ethan of conflating Judaism with Zionism. Ex. H at 2:08:38-2:09:02, 2:17:28-29, 3:11:34-55. Not only

is it cruelly ironic that someone who hates Israel has the audacity to opine on this issue, it also reveals Frogan's fundamental lack of understanding of Jewish people.[47] A 2019-2020 Pew Research Center survey of 4,718 American Jews found 82% considered caring about Israel to be "essential" or "important" to what it means to be Jewish.[48] In another poll conducted in December 2024 of 800 American-Jewish adults, "70% think anti-Zionist movements are antisemitic by definition" and only "9% strongly disagree with that statement."[49]

m. *The Nuke* takes the vast majority of the screen for Frogan's "group viewing session" – while Frogan sequesters herself to a small portion of the screen that deemphasizes her presence. Frogan's objective was to provide a large and unobstructed view of *The Nuke* to her audience – which further emphasizes her primary purpose was to provide a substitute for the original.

n. Frogan's use of *The Nuke* was highly commercial. During her "group viewing session" of *The Nuke*, Frogan: (1) repeatedly calls upon her

[47] A "Zionist" is someone who believes in the right of Jewish self-determination in their ancestral homeland. It is a broad umbrella that includes those who "consider the rights of Palestinians to be fundamental to Zionism's success." Frequently, "policies carried out by the Israeli government that harm and suppress Palestinians are often conflated by anti-Zionists as representing Zionism as a whole." This conflation has "a marginalizing effect on Jews" and is often "indistinguishable from anti-Semitism in its expression" because it uses "anti-Semitic tropes." Encyclopedia Brittanica, "Zionism" *available at*: https://www.britannica.com/topic/Zionism

[48] Justin Nortey, Pew Research Center "U.S. Jews have widely differing views on Israel" (May 21, 2021) *available at*: https://www.pewresearch.org/short-reads/2021/05/21/u-s-jews-have-widely-differing-views-on-israel/; Pew Research Center, "Jewish Americans in 2020, Appendix A: Survey methodology" (May 11, 2021) *available at*: https://www.pewresearch.org/religion/2021/05/11/appendix-a-survey-methodology-4-2/

[49] The Jewish Majority, "New Poll: Jewish Voice for Peace Does Not Represent Vast Majority of U.S. Jewish Community" (February 12, 2025), *available at*: https://img1.wsimg.com/blobby/go/2921c434-f7d7-43f4-ade6-3a5591444c85/downloads/97dc308b-4559-4e42-a55e-53c77f75c044/Press%20release%202.11.2025.pdf?ver=1739292818681

audience to pay her for a subscription to her channel;[50] (2) thanks new subscribers;[51] and (3) promotes her podcast.[52] Both before and during Frogan's "group viewing session" of *The Nuke*, Frogan places her paid subscription goal prominently on the screen, including (1) a "Chat Powerpoint Topic" (*see e.g.*, Ex. H at 28:13); (2) "Heart Cake Baking Stream" (*id.* at 1:15:59); and (3) "Sleep Stream" (*id.* at 3:02:22). Indeed, during her "group viewing session" of *The Nuke*, Frogan received numerous paid subscriptions and donations – which would result in an announcement playing over *The Nuke*. Further, Frogan received advertising revenue from her "group viewing session" of *The Nuke*. Finally, on her Twitch page where Frogan's "group viewing session" was located, Frogan placed buttons soliciting paid subscriptions and donations beneath the video of Frogan's "group view session" of *The Nuke.*

63. As to the second fair use factor, the fact *The Nuke* was released a minute prior to Frogan's "group viewing session" does not weigh in her favor. Further, while containing numerous documentary and factual elements, *The Nuke* contains numerous creative elements, which weigh against fair use.

64. As to the third fair use factor, this factor weighs heavily against fair use. It is readily apparent Frogan's use was excessive for any potential criticism of *The Nuke* – particularly in light of minimal level of commentary and highly commercial nature of Frogan's "group viewing session." This is particularly true when Frogan repeatedly provides brief statements (many of which have little to not critical bearing on *The Nuke*) after showing long unadulterated segments of *The Nuke.*

65. The fourth (and most important) fair use factor weighs the most heavily against fair use. It is readily apparent that Frogan intended (and succeeded)

[50] *See e.g.*, Ex. H at 1:44:12-29, 1:52:01-06, 2:10:24-38, 2:29:22-26.

[51] *See e.g.*, Ex. H at 1:11:23-27, 1:22:30-38, 1:52:56, 2:11:20, 2:30-42-47, 2:39:20-22, 2:45:10-12, 2:52:16-24, 3:14:28-29, 3:21:59-3:22:04.

[52] *See e.g.*, Ex. H at 1:41:01-05, 1:41:15-17, 3:07:50-54.

to provide a market substitute for *The Nuke* for the reasons set forth below:

a. The statements identified in Paragraph 62.a above.

b. Showing *The Nuke* in its entirety with minimal commentary.

c. Starting her "group viewing session" a minute after *The Nuke* was released to the public when the interest in *The Nuke* was at its apex.

d. The First Inducement Post and Second Inducement Post by the H3Snark Mods.

e. Due to Frogan's siphoning the audience for *The Nuke* to her "group viewing session," TEI lost views and advertising revenue it would ordinarily receive from the individuals who watched Frogan's "group viewing session" instead of *The Nuke*.

f. Frogan's conduct did become widespread. Several other members of Hasan's Waiting Room conducted a "group viewing session" of *The Nuke* immediately after its release – which resulted in further lost views and lost advertising revenue to TEI.

FIRST CLAIM FOR RELIEF

(For Direct Copyright Infringement – Against Frogan)

66. TEI incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

67. TEI is the sole owner of the copyrights in *The Nuke* and registered it with the USCO.

68. Frogan accessed *The Nuke* from TEI's YouTube channel, h3h3Productions.

69. TEI did not grant any license, authorization or consent for Frogan to exploit *The Nuke* in any manner. Rather, Frogan's "group viewing session" of *The Nuke* constituted an unauthorized reproduction, public performance and derivative work of *The Nuke* in violation of TEI's rights as set forth in 17 U.S.C. Section 106.

70. Due to Frogan's acts of copyright infringement, TEI has suffered damages in an amount to be established at trial.

71. Due to Frogan's acts of copyright infringement, Frogan obtained profits they would not have realized but for her infringement of TEI's copyrights in *The Nuke*.

72. Frogan's acts of copyright infringement were done with actual or constructive knowledge of TEI's rights, such that said acts of copyright infringement were willful, intentional, malicious and/or taken with reckless disregard for TEI's rights.

SECOND CLAIM FOR RELIEF

(Contributory Copyright Infringement – Against The H3 Snark Mods)

73. TEI incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

74. The H3Snark Mods (and each one of them) knew Frogan's "group viewing session" would infringe TEI's copyrights in *The Nuke*.

75. The H3Snark Mods (and each one of them) are responsible for the First Inducement Post and Second Inducement Post.

76. The First Inducement Post and Second Inducement Post induced, caused and/or materially contributed to Frogan's infringement of *The Nuke*.

77. Due to the H3Snark Mods' contributory infringement, TEI has suffered damages in an amount to be established at trial.

78. The H3Snark Mods' acts of contributory infringement were made with actual or constructive knowledge of TEI's rights, such that said acts of contributory infringement were willful, intentional, malicious and/or taken with reckless disregard for TEI's rights.

PRAYER FOR RELIEF

WHEREFORE, TEI prays for judgment against Frogan and the H3Snark

Mods (collectively, "Defendants") as follows:

a. That TEI be awarded Defendants' (and each of their) profits, plus TEI's losses, attributable to Defendants' infringements of *The* Nuke, the exact sum to be proven at the time of trial; or, if elected, statutory damages in the amount of $150,000 as available under 17 U.S.C. Section 504;

b. TEI be awarded it reasonable attorneys' fees and costs under 17 U.S.C. Section 505;

c. TEI be awarded pre-judgment interest as allowed by law; and

d. TEI be awarded such further relief as the Court deems proper.

JURY TRIAL DEMAND

TEI demands a jury trial on all issues so triable pursuant to Federal Rule of Civil Procedure 38 and the 7th Amendment to the United State Constitution.

Dated: June 17, 2025

HEAH BAR-NISSIM LLP

By _____
ROM BAR-NISSIM
Attorneys for Plaintiff Ted Entertainment, Inc.